

[illegible]

Revisions to the coastal sand dune rules were proposed for the following reasons: 1) to improve the comprehension of the rules by the public, municipal officials, and the regulated community, primarily through reformatting of the rules; 2) to amend a number of definitions to improve the clarity of the rules; 3) to establish new regulatory variance provisions for construction in frontal dunes; and 4) to include a provision to allow for the one time reconstruction of buildings damaged by more than 50% by an ocean storm.

- The requirement that reconstructed and new building in frontal dunes and unstable back dune areas be elevated on post or pile foundations. This provision significantly improves the ability of sand and water to move freely within the beach system and significantly improves the ability of those structures to withstand coastal flood hazards.
- The elimination of the current exemption for second story additions or the addition of dormers. All such construction now requires a permit and is required to meet the requirements for post or pile foundations. A variance provision has been included to allow for other types of foundations to address undue hardship.
- A new definition for a building's value. The exemption in the previous rules for maintenance and repair as well as the prohibition for reconstruction of buildings damaged by more 50% by an ocean storm relied on a determination of appraised market value. The rules now allow for a building's value to be determined in either of two ways. The value of a building may be the assessed value as established by the municipality and adjusted by the State's certified ratio, or it may be the appraised market value as determined by a State certified appraiser within the previous five years prior to the date an application is received by the Department.
- Exceptions to the prohibition on new structures or additions to existing structures in frontal dunes to allow for the construction of ramps, fire escapes and other structures to meet Americans With Disabilities Act and local fire code requirements.
- A provision allowing for the issuance of a permit for new residential buildings to be constructed on vacant lots in frontal dune areas where the surrounding lots are already developed. The provision is applicable whenever there is a structure located within 100 feet on both sides of a vacant lot. The building is required to have a post or pile foundation and is limited to covering 20% of the lot with limited additional areas for parking and walkways.
- A variance provision allowing, in certain circumstances, the construction of new buildings on vacant lots in less developed frontal dune areas and for buildings in V zones. An applicant would need to demonstrate that several criteria are met to obtain a permit.

~~~~~

| #  | name                          | affiliation                                                                           |
|----|-------------------------------|---------------------------------------------------------------------------------------|
| 1  | Michael Severance             | The Seaside, Gooch's Beach                                                            |
| 2  | Jonathan L. Carter            | Municipal Town Office of Wells, Town Mgr                                              |
| 3  | Christopher K. DeScherer      | Conservation Law Foundation                                                           |
| 4  | Linda Biter                   | Hills Beach Assoc.<br>Biddeford Pool Improvement Assoc.<br>Fortunes Rocks Association |
| 5  | Alan Wright                   | Biddeford Pool Improvement Association                                                |
| 6  | Ken Buechs                    | Coastal Area Committee of Biddeford                                                   |
| 7  | Lawrence Bliss                | Maine House of Representatives                                                        |
| 8  | Thomas J. Kane                | Maine House of Representatives                                                        |
| 9  | David G. Lemoine              | Maine House of Representatives                                                        |
| 10 | Danny Lafayette               | Lafayette Hotels                                                                      |
| 11 | Peter Daigle                  | Lafayette Hotels                                                                      |
| 12 | Katheryn W. Kelly             | Lafayette's Oceanfront Resort at Wells Beach                                          |
| 13 | Jennifer Burns                | Maine Audubon                                                                         |
| 14 | Jody Jones                    | Maine Audubon                                                                         |
| 15 | Kathleen Leyden               | Maine Coastal Program                                                                 |
| 16 | Robert G. Marvinney           | Maine Geological Survey                                                               |
| 17 | Karen Maxwell                 | Ogunquit Board of Selectmen                                                           |
| 18 | James E. Harmon               | Old Orchard Beach Chamber of Commerce                                                 |
| 19 | William E. Taylor             | Pierce Atwood (representing Paul McQuade)                                             |
| 20 | Andrew A. Cadot, Esq.         | Perkins Thompson Hinckley & Keddy, P.A.                                               |
| 21 | Robert R. Gould               | Prouts Neck Community Organization                                                    |
| 22 | Alan R. Schwarte              | Alan R. Schwarte, Planning Consultant                                                 |
| 23 | Susanne Schaller              | Southern Maine Regional Planning Commission                                           |
| 24 | Barry S. Timson               | Timson & Associates(representing Tim Flynn and Paul McQuade)                          |
| 25 | Hope Creal Jacobsen           | Verrill & Dana (representing Robert Derrah)                                           |
| 26 | Robert Foley                  | Municipal Office Town of Wells, Board of Selectmen                                    |
| 27 | Dr. Joseph T. Kelley          | University of Maine, Marine Geology                                                   |
| 28 | Alison Reiser                 | University of Maine School of Law                                                     |
| 29 | Beth Currier and Tory Phillip |                                                                                       |

|    |                                             |  |
|----|---------------------------------------------|--|
| 30 | H. William Gallagher                        |  |
| 31 | Eleanor Doe-Matheson<br>and Donald Matheson |  |
| 32 | Les Hanson                                  |  |
| 33 | Kathlyn G. Logan                            |  |
| 34 | Michael Dudgeon                             |  |
| 35 | Robert S. Clark                             |  |
| 36 | Pierre R. Belanger                          |  |
| 37 | Carole Ward Troy                            |  |
| 38 | Dick and Mary Ann<br>Albert                 |  |
| 39 | Brian and Cheryl<br>Margadonna              |  |
| 40 | Ms. Mary Lou Nolas                          |  |
| 41 | Gail Rizzo                                  |  |
| 42 | Jonie Flanagan                              |  |
| 43 | Martha C. Kennedy                           |  |
| 44 | Jim and Susan Kanak                         |  |
| 45 | Don Casey                                   |  |
| 46 | Barbara Houlihan                            |  |
| 47 | Robert and Virginia<br>Almeder              |  |
| 48 | Susan Walker                                |  |
| 49 | Theresa Wiper                               |  |
| 50 | B. Frederica Billingslea                    |  |
| 51 | Dawn and Mark Werner                        |  |
| 52 | Rick, Marilou, and Zack<br>Pych             |  |
| 53 | Helena And Barbara<br>Coffey                |  |
| 54 | Hartwell H. Blanchard                       |  |
| 55 | Muriel and Phillip<br>Withrow               |  |
| 56 | Maureen E. Parkin                           |  |
| 57 | Dallas Kroll                                |  |
| 58 | John and Jane Lunt                          |  |
| 59 | Alex Merrow                                 |  |
| 60 | Jonathan R. Turnbull                        |  |
| 61 | Ray Sirois                                  |  |
| 62 | Orlanda E. Delogu                           |  |
| 63 | Stephen A. and M.<br>Barbara Record         |  |
| 64 | Lee Edwards                                 |  |
| 65 | Doug Williams                               |  |
| 66 | Marcel Moreau                               |  |
| 67 | Jewel B. Suchecki                           |  |
| 68 | Carol Carlson                               |  |

|      |                                               |                                                                 |
|------|-----------------------------------------------|-----------------------------------------------------------------|
| 69   | Isabel Lewan do                               |                                                                 |
| 70   | John D. Delahanty                             |                                                                 |
| 71   | Jan M. Collins                                |                                                                 |
| 72   | Max and Carol Eveleth                         |                                                                 |
| 73   | Gordon F. Grimes                              |                                                                 |
| 74   | Mrs. Evan Miller                              |                                                                 |
| 75   | Alex Merrow                                   |                                                                 |
| 76   | Martha L. Taylor                              |                                                                 |
| 77   | Dana and Deborah Person                       |                                                                 |
| 78   | Madelyn Marx                                  |                                                                 |
| 79   | Janice and Cecil Cadwell                      |                                                                 |
| 80   | Gladys M. Hall                                |                                                                 |
| 81   | Paula N. Mamone                               |                                                                 |
| 82   | Josh Merrow                                   |                                                                 |
| 83   | Joan Wernick                                  |                                                                 |
| 84   | Mary Beth Gentleman                           |                                                                 |
| 85   | Marianne Carlson                              |                                                                 |
| 86   | Robert F. Wright and<br>William P. DeSaulnier |                                                                 |
| 87   | Barbara Bouchard                              |                                                                 |
| 88   | Joan Swartz                                   |                                                                 |
| 89   | Nancy Freese                                  |                                                                 |
| 90   | Belinda Pendleton                             |                                                                 |
| 91   | Ronald Huber                                  |                                                                 |
| 92   | Wilbur N. Rhodes                              |                                                                 |
| 93   | William Lee                                   |                                                                 |
| 93A  | Harriet and Joseph G.<br>Sevick(William Lee)  |                                                                 |
| 94   | Roland Chase                                  | Pine Point Vista Condominium Owners<br>Assoc.(#94 through #114) |
| 95   | Rita C. Bascome                               |                                                                 |
| 96   | Michael Angelosa                              |                                                                 |
| 97   | Ken Comarty                                   |                                                                 |
| 98   | Linda Breneman                                |                                                                 |
| 99   | Elizabeth L. Dahs                             |                                                                 |
| 100  | Lorraine Harper                               |                                                                 |
| 101  | Peter P. Hazen                                |                                                                 |
| 102  | Jeremy A Warren                               |                                                                 |
| 103  | Jean Hallebel                                 |                                                                 |
| 104  | L. Hansen                                     |                                                                 |
| 105  | Kay Soucey                                    |                                                                 |
| 106  | Dolores Stacey                                |                                                                 |
| 107  | Jackie Merrill                                |                                                                 |
| 1089 | Grace A. Schmidt                              |                                                                 |
| 109  | Fred J. Merrill                               |                                                                 |
| 110  | George H. Stacey                              |                                                                 |
| 111  | Kathleen Wright                               |                                                                 |

|      |                                |                                            |
|------|--------------------------------|--------------------------------------------|
| 112  | Lee D. Paris                   |                                            |
| 113  | Lois Welles                    |                                            |
| 114  | Peter O. Schmidt               | Pine Point Vista Condominium Owners Assoc. |
| 115  | Nancy D. and Howard B. Bliss   |                                            |
| 116  | Karina and Mark Rathmell       |                                            |
| 117  | Jo Wagner                      |                                            |
| 118  | Norman D. and Anne L. Davidson |                                            |
| 119  | Virginia M. Hall               |                                            |
| 120  | William and Hilde Cox          |                                            |
| 121  | Jan Conley                     |                                            |
| 122  | Kate O'Brien and Mark Ducey    |                                            |
| 123  | Wayne Persons                  |                                            |
| 124  | Alison Grinder                 |                                            |
| 125  | Bob and Mary Haven             |                                            |
| 126  | Susanne Williams-Lindgren      |                                            |
| 127  | Susan Woodside                 |                                            |
| 1289 | Stan Ingram                    |                                            |
| 129  | Lesley Hoey                    |                                            |
| 130  | Margery Blonder                |                                            |
| 131  | Francis Schumann, MD           |                                            |
| 132  | Jane John                      |                                            |
| 133  | David Pope                     |                                            |
| 134  | Gloria Seigars                 |                                            |
| 135  | Cheri Domina                   |                                            |
| 136  | Mark Haseltine                 |                                            |
| 137  | Jonathan L. LeVeen             | Town of Bristol Parks & Rec. Dept.         |
| 138  | Mark A. Vannoy, P.E.           | Wright Pierce                              |
| 139  | Lehan A. Edwards               | Schoodic Chapter of Maine Audubon Society  |
| 140  | Edward I. Johnston             | Resource Policy Group                      |
| 141  | Kenneth Fink                   |                                            |
| 142  | Ron Salkin                     | (#142 through #381 are form letters        |
| 143  | David Kratz Mathies            |                                            |
| 144  | Crystal Smyth                  |                                            |
| 145  | Benoit Drappeau                |                                            |
| 146  | Tom Armstrong                  |                                            |
| 147  | Susan Schraft, MD              |                                            |
| 148  | Maggie Williams                |                                            |
| 149  | Matt Scease                    |                                            |
| 150  | Mitchell Kihn                  |                                            |
| 151  | Denise Pendleton               |                                            |
| 152  | Lawrence Fischman              |                                            |
| 153  | Jeff Mann                      |                                            |

|     |                               |  |
|-----|-------------------------------|--|
| 154 | Kristin Malin                 |  |
| 155 | Dean Sheldon                  |  |
| 156 | Madge Baker                   |  |
| 157 | Eva Dimond                    |  |
| 158 | Doris Nuesse                  |  |
| 159 | Louise Bennett                |  |
| 160 | Christine West                |  |
| 161 | Julie Bond                    |  |
| 162 | Albert Wilson                 |  |
| 163 | Betsy Bradford                |  |
| 164 | Peter Davis                   |  |
| 165 | Emily Keef                    |  |
| 166 | Matt Prindiville              |  |
| 167 | Martha Briggs                 |  |
| 168 | Nancy and Walter<br>Johansson |  |
| 169 | John Grill                    |  |
| 170 | Jane Olson                    |  |
| 171 | Y. Ferrer Borinquen           |  |
| 172 | Christy Swanson               |  |
| 173 | Shirley Davis                 |  |
| 174 | Eric Goodenough               |  |
| 175 | Sandra Hutchings              |  |
| 176 | Cuff Train                    |  |
| 177 | Barbara Rath                  |  |
| 178 | John Pehek                    |  |
| 179 | Marjorie Monteleon            |  |
| 180 | Stephanie Strong              |  |
| 181 | Lydia Bishop                  |  |
| 182 | Sarah Wiley                   |  |
| 183 | Holly Mitchell                |  |
| 184 | George Shaler                 |  |
| 185 | Susan Wilder                  |  |
| 186 | Ian Burnes                    |  |
| 187 | Gertrude Akers                |  |
| 188 | Jennifer Hodgins              |  |
| 189 | Paul Williams                 |  |
| 190 | Roger Lee                     |  |
| 191 | Rhonda and George<br>Keiper   |  |
| 192 | Saskia Bopp                   |  |
| 193 | Penny Morris                  |  |
| 194 | Patricia Hopkins              |  |
| 195 | Bill and Marilyn Voorhies     |  |
| 196 | Judith Scher                  |  |
| 197 | Glenn Tikkanen                |  |
| 198 | Michele Green                 |  |

|     |                                    |  |
|-----|------------------------------------|--|
| 199 | David Brookes                      |  |
| 200 | David Matsuno                      |  |
| 201 | Timothy Wess                       |  |
| 202 | Janette Lynch                      |  |
| 203 | Deborah Brown                      |  |
| 204 | Robert Fritsch                     |  |
| 205 | Amy Mitchell                       |  |
| 206 | John Bernard                       |  |
| 207 | Jerri Brandt                       |  |
| 208 | Eric Schneider                     |  |
| 209 | Dinda Evans                        |  |
| 210 | Robert French                      |  |
| 211 | Kurt Greenstone                    |  |
| 212 | Jerry Smith                        |  |
| 213 | Lelania Avila                      |  |
| 214 | Beth Brown                         |  |
| 215 | Pat Porter                         |  |
| 216 | Evan and Deane Henry               |  |
| 217 | Bill Galli                         |  |
| 218 | Suki Ewers                         |  |
| 219 | Dolores and Richard Hoeh           |  |
| 220 | Jessica Ma                         |  |
| 221 | Russell Heath                      |  |
| 222 | Brian Lee                          |  |
| 223 | Karen Larsen                       |  |
| 224 | Will Dunlay                        |  |
| 225 | Jayne Lello                        |  |
| 226 | Mark Mehnke                        |  |
| 227 | John Henderson                     |  |
| 228 | Ginny Remeika                      |  |
| 229 | John Burrows                       |  |
| 230 | Patricia Bredenber, Ph.D.,<br>NP-C |  |
| 231 | Sam Bishop                         |  |
| 232 | Denise Barbieri                    |  |
| 233 | Ron D'Amico                        |  |
| 234 | Donald Holmes                      |  |
| 235 | Michelle Cacho-Negrete             |  |
| 236 | Shawna Schwalenberg                |  |
| 237 | Molly O'Connell                    |  |
| 238 | Lisa Marshall                      |  |
| 239 | Katie McNeill                      |  |
| 240 | Aurelia Scott                      |  |
| 241 | Daniel Nein                        |  |
| 242 | M. Laughran                        |  |
| 243 | Frank Dehler                       |  |
| 244 | Tracey Walls                       |  |

|     |                     |  |
|-----|---------------------|--|
| 245 | Maureen Kirsch      |  |
| 246 | Jennifer Kim        |  |
| 247 | John Monahan        |  |
| 248 | Douglas Dolan       |  |
| 249 | Sandra Tardiff      |  |
| 250 | Patricia Sullivan   |  |
| 251 | Chip Edgar          |  |
| 252 | Karen Larsen        |  |
| 253 | Diane Brackett      |  |
| 254 | Lora Wondolowski    |  |
| 255 | Carolyn Carter      |  |
| 256 | Rebecca Sanders     |  |
| 257 | Carolyn Maugher     |  |
| 258 | Richard Frantz      |  |
| 259 | Michael W. Huber    |  |
| 260 | Marie Malin         |  |
| 261 | Bill Karl           |  |
| 262 | John Petrofsky      |  |
| 263 | Luke Dowling        |  |
| 264 | Sally Howell        |  |
| 265 | Cynthia Reilly      |  |
| 266 | Laura Dehler        |  |
| 267 | Diego Casado        |  |
| 268 | Chris Dalton        |  |
| 269 | N. Files            |  |
| 270 | Sarah O'Malley      |  |
| 271 | David Kendall       |  |
| 272 | Nancy Jerauld       |  |
| 273 | Jean Atkinson       |  |
| 274 | Mike Haskell        |  |
| 275 | Molly P. Scheu      |  |
| 276 | Terry Bunch         |  |
| 277 | Ann Bagala          |  |
| 278 | Rachel Speed        |  |
| 279 | Adam Ackerman       |  |
| 280 | Frank Harte         |  |
| 281 | Linda VonMerta      |  |
| 282 | France Perlman      |  |
| 283 | William Boucher, MD |  |
| 284 | Natalie Doel        |  |
| 285 | Kathleen McGee      |  |
| 286 | Sharon Betts        |  |
| 287 | Vicki Collins       |  |
| 288 | Meg Dellenbaugh     |  |
| 289 | Gabe Weiss          |  |
| 290 | Laura Paise         |  |
| 291 | Sarah Carpenter     |  |



|     |                         |  |
|-----|-------------------------|--|
| 292 | Alexandra R. Samaras    |  |
| 293 | David Fleischer         |  |
| 294 | Steve McAllister        |  |
| 295 | Whitney Houghton        |  |
| 296 | Rob Slabinski           |  |
| 297 | Sandy Kauffman          |  |
| 298 | Bryce Smith             |  |
| 299 | Joan Yates              |  |
| 300 | Tarsha White            |  |
| 301 | Conrad Wurtz            |  |
| 302 | Janet E. McAuley        |  |
| 303 | Liz Stanley             |  |
| 304 | Peg Hobbs               |  |
| 305 | Kerrie O'Donnell        |  |
| 306 | Susanne Willard         |  |
| 307 | Bob Miller              |  |
| 308 | Wing Goodale            |  |
| 309 | Ravi Grover             |  |
| 310 | Peter Green             |  |
| 311 | Paul Vose               |  |
| 312 | Rich Mason              |  |
| 313 | Charles and Ellen Brown |  |
| 314 | Judy Jones              |  |
| 315 | Kathy Simmonds          |  |
| 316 | Cheryl Moore            |  |
| 317 | Jason Klucik            |  |
| 318 | Scott Warner            |  |
| 319 | Kevin McKeon            |  |
| 320 | Eliza Townsend          |  |
| 321 | Peter Kurkarnaza        |  |
| 322 | Elizabeth O'Donoghue    |  |
| 323 | Matthew Moore           |  |
| 324 | Charles Clark           |  |
| 325 | Diane Jordan            |  |
| 326 | John Kesich             |  |
| 327 | Derek Berg              |  |
| 328 | Susan Schraft           |  |
| 329 | Barb Lelli              |  |
| 330 | Elizabeth Wilkins       |  |
| 331 | Jeff Frontz             |  |
| 332 | David Grimesey          |  |
| 333 | Betsy Bradford          |  |
| 334 | Clark Moseley, DVM      |  |
| 335 | Chris Watson            |  |
| 335 | David Kratz Mathies     |  |
| 337 | Margaret Knutson        |  |
| 338 | Evelyn Duplissis        |  |

|            |                                      |                                      |
|------------|--------------------------------------|--------------------------------------|
| 339        | Leslie Hallock                       |                                      |
| 340        | C. Douglas Miller                    |                                      |
| 341        | Elizabeth Kelsey                     |                                      |
| 342        | Nancy D. Gray                        |                                      |
| 343        | David Murray                         |                                      |
| 344        | Irene Blodgett                       |                                      |
| 345        | Susan Drucker                        |                                      |
| 346        | J. Bruce Amstutz                     |                                      |
| 347        | Mary and Jon McPherson<br>and LeVeen |                                      |
| 348        | Leslie Clapp                         |                                      |
| 349        | Becca Wilson                         |                                      |
| 350        | Elizabeth Payne                      |                                      |
| 351        | Mark DiGirolamo                      |                                      |
| 352        | Margaret Phillips                    |                                      |
| 353        | Allyson Stone                        |                                      |
| 354        | Diane Bartholomew                    |                                      |
| 355        | Susan Dickson-Smith                  |                                      |
| 356        | Dawn Morse                           |                                      |
| 357        | Arthur-James Benson                  |                                      |
| 358        | Amy Tajdari                          |                                      |
| 359        | Alex Karaczun                        |                                      |
| 360        | Karen Lipiatos                       |                                      |
| 361        | Kristin Pennock                      |                                      |
| 362        | Shauna Turnbull                      |                                      |
| 363        | Nancy McReel                         |                                      |
| 364        | Bob Brooks                           |                                      |
| 365        | Renee Gannon                         |                                      |
| 366        | Lisa Knauf                           |                                      |
| 367        | Grace Trifaro                        |                                      |
| 368        | Robin Stanley                        |                                      |
| 369        | Greg Schneider                       |                                      |
| 370        | Caryl Everett                        |                                      |
| 371        | Walter L. Pepperman                  |                                      |
| 372        | Jan Warren                           |                                      |
| 373        | William Hendricks                    |                                      |
| 374        | Antonio Blasi                        |                                      |
| 375        | Margaret Marshall                    |                                      |
| 376        | Jeremy Dickson-Smith                 |                                      |
| 377        | Connie Boitano                       |                                      |
| 378        | Kevin Roche                          |                                      |
| 379        | Crystal Hitchings                    |                                      |
| 380        | James Pendleton                      |                                      |
| 381        | Margaret Smith                       | (#142 through #381 are form letters) |
| 382        | Mark Mahnke                          |                                      |
| <b>383</b> | <b>Paul Demers</b>                   | <b>Town of Kennebunk</b>             |
| <b>384</b> | <b>Megan Kelly</b>                   |                                      |



## SECTION 3: DEFINITIONS

### Section 3(A)

1. Object to the assessed value definition in August rules. 4, 21, 26, 33, 36, 43, 52, 54, 56, 64, 70, 72, 79-80, 387, 389, 391, 399-400, 407
2. I am in favor of the proposed change to assess storm damage according to assessed evaluation rather than appraised market value. 71
3. Supports clearly identifying the manner in which the appraised market value will be determined in the case of a building being damaged by an ocean storm. 13-14, 26
4. Supports new building value definition. 124, 401
5. Would like the fair market value of the property to be used as the assess value. 398

*Response: The term assessed value was changed to building's value. An option for utilizing either assessed value as adjusted by the state's certified ratio or appraised market value as determined by a state certified appraiser is included in that definition.*

6. What will the criteria be for determining whether or to what extent the loss of 50% of a structure's "assessed value" correlates with 50% of "market value"? 9
7. The use of either 50% of the town or City's assessed value versus 50% of a Maine Certified Appraiser's appraised value is placing the property owner under the department's imposed restriction of having to pay \$250-350 every five years to have an up to date appraisal on file. This would be the higher basis by which he could protect his property should it be 50% damaged. To impose this cost on private property owners and taxpayers is not just. 136

*Response: The Department does not believe it is necessary to correlate the two. They are separate determinations, each of which is acceptable to the Department for determining a building's value. Land owners are not required to have a certified appraisal performed and may rely on adjusted assessed value.*

8. There is no statutory authorization for this concept of 50% as it is being used throughout the rules except to a limited degree in Section 4C, nor is such use reasonably inferable from the statute. The Legislature did not choose to specify in Section 480-Q what 50% of a structure meant. The Department has now chosen to make this determination based upon municipal assessed value. 73

*Response: The purpose of these regulations is to interpret and make more specific the statutory provisions enacted by the legislature. The legislature has directed the Board and the Department to develop and adopt rules that are necessary for the interpretation, implementation and enforcement of the Natural Resources Protection Act. The definition of Maintenance and repair in the rules further specifies the maintenance and repair exemption found in the statute at 38 MRSA Section 480-Q(2). The definitions of Reconstruction and Severe Damage have been*

*drafted in keeping with the legislature's guidance as to what constitutes a major change to a structure.*

9. Will local tax assessment values be an inaccurate and inconsistent standard for promoting a coherent statewide policy on dune regulation? 9

*Response: The Department believes that use of the state certified ratio in determining locally assessed valuations will provide consistency.*

10. Believes insured replacement cost should be used to determine the 50% threshold as it reflects the true value of the property lost. Appraised value and assessed value take into account several subjective. With insured replacement value the state would be dealing with the same cost comparisons without regard for manipulation. The insurance company can provide to the state or the property owner a certified binder showing the replacement cost at the time of the loss or the application. 26

*Response: No change. Use of the appraised market value and the adjusted assessed value will yield similar dollar amounts for determining a building's value. Use of insured replacement cost is likely to result in differing dollar amounts than those obtained by determining appraised market value and adjusted assessed value.*

#### **Sections 3(H) and 3(T) – Sections 3(I) and 3(T) in previous draft**

11. It is unclear if porches are part of a building when one reads the definitions of building and footprint. 22
12. Building a porch is included as part of the building definition but in the footprint definition a porch is not considered part of the footprint. The footprint has normally been considered by the DEP to be the shadow made if one were looking down from the heavens. You are removing any possibility of making covered porches part of a year around home or garage. Porches and permanently roofed areas should be part of the building and the footprint. 136
13. I would suggest that porches, deck, and patios as well as any out buildings be included when determining the footprint of the building. This makes for a tighter ordinance and decreases disturbance of the natural vegetation. 71

*Response: The definitions of building and footprint were changed in response to these comments. The building definition includes a roofed porch as part of the building. For the purpose of determining the building's footprint, porches are not included. In Section 6(D), language was added to make it clear that an existing porch may be rebuilt even though it is not within the building's footprint.*

#### **Section 3(O) – Section 3(G) in previous draft**

14. Beach nourishment is defined as the artificial addition of sand or gravel to a beach or subtidal area adjacent to a beach. In some states, glass is being used for beach nourishment. I would suggest broadening the definition so that glass, or another material accepted on best current practices, would not be excluded in the future. 23

*Response: The beach nourishment definition was changed to include the use of other materials similar to sand and gravel, as determined to be appropriate by the Department.*

### **Section 3(P)**

15. Dune vegetation is defined as the “natural” plant community including, but not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine. I would propose replacing “natural” with “native”, since invasive plant species and exotic landscaping plants can become naturalized, not are still non-native species. I would also suggest inserting the Latin names, since common names are sometimes used to refer to more than one species. I offer you this list: American beach grass ((Ammophila breviligulata), beach rose (Rosa rugosa), bayberry (Myrica pensylvanica), beach pea (Lathyrus maritimus), seaside goldenrod (Solidago sempervirens), beach heather (Hudsonia tomentosa) and pitch pine (Pinus rigida). 23

*Response: The definition of dune vegetation was changed in response to this comment and Section 9(C) – Standard Condition of Permits, Dune vegetation was also changed. The revisions now reference plant species typically adapted to Maine’s coastal sand dune systems.*

### **Section 3(Q)**

16. Supports adding Erosion Hazard Area definition to the rules but would change 3(Q)(3) to “Flooding of a FEMA mapped AO Zone in a 100-year storm after a sea-level rise of 1 foot.” 24

*Response: No change. The Department has determined that a projected two foot rise in sea level over 100 years is appropriate for the purpose of assessing flooding impacts on a project.*

### **Section 3(V)**

17. The frontal dune definition states that “the frontal dune may or may not be vegetated with natural flora.” For consistency, I would suggest changing this from natural flora to native flora. Section 6(B)(5)(h) already refers to sand dune mitigation and enhancement measures as using native vegetation. 23

*Response: “Natural flora” and “native flora” are ambiguous terms. The Department changed “natural flora” to “dune vegetation that includes plant species typically adapted to Maine’s coastal sand dune systems.”*

18. The definition of frontal dune does not recognize the frontal dune ridge created during prior erosional/accretionary cycles. This frontal dune ridge may occupy a landward position considerably far away from present shoreline and it represents what we have identified as a former shoreline position indicator. Our understanding is that the shoreline could retreat to that position again under a regime of sea level rise. 141

*Response: No change. The Department concurs. However, for the purpose of administering the sand dune rules, the frontal dune location is determined by current available information at the time an application is filed.*

### **Section 3(X)**

19. Add wave action to last sentence so it would read “A closed fence may not be reconstructed in any A-zone, B-zone, V-zone or shaded X-zone after being damaged by wave action from an ocean storm.” 140

*Response: The Department concurs and the definition has been changed.*

### **Section 3(AA)**

20. The current draft regulations lack sufficient guidance to address the use of snow fencing. We understand that snow fences are used as a dune protection measure, but these fences interfere with the natural redistribution processes of sand on beaches. These fences create an artificial ridge, and pedestrians typically trample up to the point where the fences are positioned destroying any seaward growth of vegetation. The regulations should require that all snow fences be removed during the winter to allow for natural processes to occur. 3, 141

*Response: The Department has eliminated snow fence from the definition of open fence and included snow fence under the definition of closed fence. The placement of a snow fence requires a permit under the rules.*

### **Section 3(CC)**

21. Section 3(CC)(1) should be reworded so that the deck is required to be 3 feet above grade. The way it is currently written the posts that support the deck must be 3 feet above grade. 22

*Response: The Department concurs and the definition was changed.*

22. It is unclear why a deck should be an exception. This makes for a tighter ordinance and decreases disturbance of the natural vegetation. 71

*Response: The existing rules allow for a 200 square foot deck and the Department chose not to further restrict that provision under the current draft rules.*

23. The excluding of 200 square foot decks and 100 square foot sheds is unreasonable since it doesn't take into consideration the size of the lot. 70

*Response: The Department has determined that these de minimus size limitations for decks and sheds are adequate to allow for an appropriate level of use on frontal dune properties.*

### **Section 3(DD) – Section 3(EE) in previous draft**

24. “Falls under the jurisdiction of NRPA” is vague. 73

*Response: The comment is unclear. However, the list of activities regulated pursuant to the Natural Resources Protection Act can be found at 38 M.R.S.A. Section 480-C(2).*

## **SECTION 4: REVIEW NOT REQUIRED**

### **Section 4(A)**

25. Section 4(A)(3) Is there any limit to how often loam can be applied or under what circumstances? 71

*Response: This section was changed to add the words “and maintenance” to allow an individual to apply and maintain up to 3 inches of loam to an existing lawn.*

26. We think listing de minimus activities where review is not required is a major improvement. 26

*No response.*

27. Some of these new suggestions from the DEP are good. We should be able to construct walkways and paths, remove debris, clean up sand that lands on our lawn areas and put it back into the dune system. These are all positives that we need to change in the existing rule. 397

*No response.*

### **Section 4(C)**

28. Section 4-C requires that rebuilding be restricted to the building’s dimensions as it was 24 months prior to damage. This precludes any possibility of rebuilding any additions that may have been completed in the most recent two years. 7, 49

*Response: It appears that the commenters misunderstood this section. Section 4(C) prevents applicants from attempting to rebuild structures that were not in existence within the last 24 months and defining that activity as maintenance and repair instead of a new activity.*

29. Supports strengthening of maintenance and repair section. 13-14

*No response.*

30. Section 4(C)(2)(a) should include an exemption if the foundation is converted to a post system in accordance with local flood regulations as long as it is at least 3 feet above grade. 22

*Response: Section 4(A)(6) was added to make this a de minimus activity.*

31. In Section 480-C the Legislature chose not to regulate “maintenance” on a sand dune. In 480-Q(2) the legislative restriction applies to “repair” when it involves more than 50% of a structure. Yet the rules in 4C extend the permit requirement to both maintenance and repair. This conflict must be resolved in favor of removing maintenance activities from the calculation of the 50%. 73



32. The proposed rules impermissibly prohibit maintenance of existing structures when they are not being carried out in conjunction with a repair, and they impermissibly add the concept of maintenance into the 50% calculation when determining when a permit is required. 21

*Response: To maintain can be defined as to preserve or to keep in good repair. In articulating an exemption for the “maintenance and repair” of structures provided that certain conditions are met, the legislature made it evident that it intended maintenance and repair of structures to be regulated under the Natural Resources Protection Act. There would be no need for an exemption for maintenance, if the legislature did not intend it to be a regulated activity.*

#### **Section 4(D) in previous draft**

33. Supports requiring anyone undertaking efforts to protect the integrity of their seawalls to complete this effort and remove any additional material within one year (August). 13-14
34. Don’t agree with requirement that emergency stabilization material be removed within a year. 21, 73
35. Twelve hours for the CEO to respond seems unreasonable. Twenty-four hours, to allow for the possibility of the storm’s passage, would seem more reasonable. 71
36. Believe this proposed section of the rule contradicts the statute particularly the requirement that material be removed within one year and that the DEP certify the replacement project. 26, 140

*Response: This section was deleted in the current draft rules. The Department decided to defer to the statutory language in 38 M.R.S.A. Section 480-W.*

### **SECTION 5: STANDARDS FOR ALL PROJECTS**

#### **Section 5(A) in previous draft – Deleted from current draft**

37. If rebuilding of structures is not permitted, private and municipal seawalls that now protect rights-of-ways and roads will be lost and so will access to the shoreland. 1
38. Object to Section 5(A) and thinks buildings should be allowed to be rebuilt. Rebuilding shouldn’t be subject to variance section. 1, 10-12, 21, 26, 29-32, 35-47, 49, 51-59, 72-74, 77-80, 82-86, 387-388, 391, 395-396, 402-403
39. Concerned about balancing Wells’ economic issues with the State’s environmental concerns. Wants the Board to allow same-size reconstruction of properties using best management practices and flood-proofing designs. 2
40. There would be a significant negative economic impact through loss of jobs and business and tax revenue, and tourism would decline. 9, 11, 39, 41, 57
41. Do not agree that there is “zero fiscal impact to any communities” should these amendments be adopted. Town could be prohibited from rebuilding things like municipal parking lots, which contribute to the town’s operating budget. 17, 26, 47

42. Supports Section 5-A that clarifies that only V-zone properties that have been damaged by 50% or more of assessed value as a result of flooding may not be rebuilt. Thinks this is a positive change from existing rules. 7
43. Why has “located in a V-Zone” been inserted since an earlier draft? 16
44. I believe the reconstruction prohibition would wreak havoc with utility costs. The companies providing telephone, cable, electricity, water and sewer services have invested in the infrastructure now serving the homes and businesses in the coastal areas and would suffer loss of customer base if buildings couldn’t be rebuilt. That would mean that the remaining customers would be asked to pay for unrecovered capital costs. 84
45. This concept of prohibiting rebuilding is completely unauthorized by any statutory provision. This is a major revision to existing rule section 3(B)(3)(b) that allows rebuilding if the project meets the standards for new buildings. 73
46. Why pick 50% for Section 5-A and not 60%, 70%, etc.? 11, 389, 400
47. A damage threshold of 50% should relate to the physical structure, not necessarily the value of the contents. The cause of damage should be from natural processes on the site such as wave, flooding and wind impacts from storm, but not collateral damage by wave or air-borne debris. 16
48. Differentiation made in Section 6(C)(1) and 5(A) between damage by an ocean storm and a fire is irrational. What should be allowed or disallowed under the standards of Section 480-D must turn on the reasonableness of the impact, not on the cause of the need to take action. 73
49. Repair/replacement of an existing structure with more than 50% damage should be permitted if structural damage was due to wind, falling trees, fire, and other non-ocean factors. Hurricanes, thunderstorms, and tornadoes can do significant damage to buildings without there necessarily being beach erosion and/or wave action resulting in structure damage. In these cases it seems reasonable that owners be allowed to repair/rebuild without obtaining an exemption. 63
50. A minimum setback in feet would allow a slow movement of buildings back away from the high tide. 71

*Response: Section 5(A) in the previous draft rules stated that “A building located in a V-Zone that has been damaged 50% or more of its assessed value due to an ocean storm may not be reconstructed”. This section was deleted. It was replaced with Section 6(C)(1), which allows a building in a V-zone that is involuntarily destroyed by fire or some other force majeure to be rebuilt and Section 6(C)(3), which allows a building in a V-zone that is involuntarily destroyed by wave action from an ocean storm to be reconstructed once. Damage by an ocean storm is a strong indication that the project is subject to flooding and erosion and possibly changes in the shoreline. Damage from fire is unrelated to the impacts to the sand dune system, which the Natural Resources Protection Act is seeking to prevent. Any new construction that is an activity listed in the Natural Resources Protection Act(38 M.R.S.A. Section 480-C(2) can be regulated.*

*By adopting this rule, the Board is determining that in certain locations the reconstruction of a building damaged by an ocean storm does not meet the standards of the Natural Resources Protection Act.*

**Section 5(B) – Section 7(B) in previous draft**

- 51. Opposes new building being limited by the location of the neighbors' buildings. 21
- 52. Section 7(B) does not work since the lot layout in many back dune areas is not parallel to the beach and the line drawn could be between "adjacent properties" that would be perpendicular to the beach. 22

*Response: This requirement was found in Section 7(B) in a previous draft. It was moved to Section 5(B)(4) and language from the existing rules, "where such construction would not significantly obstruct the view", was re-incorporated to make it clear that this requirement will insure that the proposed project complies with 38 M.R.S.A. Section 480(D)(1), Existing Uses.*

**Section 5(C) – Section 5(D) in previous draft**

- 53. A three-foot rise in sea level over 100 years is completely arbitrary especially in light of contradictory scientific evidence. 29, 47, 51, 54
- 54. Shouldn't change sea level rise projection over next 100 years from three to two feet unless the scientific community supports it. 3
- 55. Best scientific evidence today indicates that climate change-induced sea-level rise has begun and is reflected in the Portland tide gauge data. A two-foot rise in the next century is the middle of the road in the meaningful scientific assessments of sea-level change that are current. We support requiring new and reconstructed structures to be raised in anticipation of 2 feet of sea-level rise. 4, 13-14, 16, 27
- 56. Local data clearly indicates that a major portion of our beaches have remained relatively stable for the past century and the model of barrier maintenance and behavior applied to the Maine coast in the past is more indicative of barrier behavior elsewhere on the Eastern seaboard where hurricane washover is a dominant process on shorelines of less tidal range. 24
- 57. Disagrees with testimony of Robert Marvinney, Maine State Geologist, that the historic water levels as measured at the Portland tide gauge reflect a recent worldwide rise in sea level due to global warming. Believes changes in relative sea level at any one tide gauge are the result of local crustal vertical shift; local sea level variations due to temperature, wind set-up and runoff; and world-wide sea level changes. I know of no recent scientific efforts to distinguish how much of the tide gauge water level changes are due to world-wide sea level change alone. 24
- 58. The predicted increase in sea level rise rates has not materialized. I would suggest that a sea level rise rate of 1 foot per century be used in the amended regulations, as we have actual records that this was the highest long-term rate achieved over the last 90 years. 24

59. Support rules that anticipate 100 years of erosion. New rules take the best available local erosion information into consideration in the permit process. Furthermore, the rules should address whether a site is affected by erosion, not whether a structure is likely to be damaged by erosion. 16, 71
60. Disagree with the use of 100 years. Nowhere in the Natural Resources Protection Act is the DEP authorized to regulate based upon a “prediction” over a 100-year period. 21, 73
61. Change 100 years to 60 years since that is timeframe for which historical aerial photographs are available and the timeframe the Internal Revenue Service uses for depreciation. 24
62. DEP staff should have the ability to consider the potential impacts of erosion and sea level rise on a project by project basis, using current and historical information regarding the specific project location. Projections of sea level rise could be given consideration, but not as an absolute irrefutable standard based on a 100 years. 26, 136
63. The Sand Dune Rules will continue to remain a conundrum for years to come as long as they are grounded in the Board’s (and Department’s) desire to 1) make one set of regulations fit all of Maine’s developed barrier beaches; 2) restore developed sand dunes to their natural state; and 3) maintain a regulatory standard which requires speculation of conditions 100 years into the future under sea-level rise rates which are predicted (and continually changing) mostly through stochastic modeling. 24

*Response: Since 1987 there has been 15 years of very detailed and thorough research on global climate change and sea level rise. Much of the testimony at the public hearings and in written comments indicate a rate of sea level rise in the one foot range over the last century. In consideration of the potential impacts that global warming will have on sea levels in the future, the Department considers it prudent to allow for an additional one foot of rise. Regarding the issue of considering sea level rise over a hundred year period, the Department believes that the original basis for the use of that time period, as first established in 1983, anticipated assessing impacts from development over the useful life of structures in the sand dune system. That consideration is consistent with how the Department assesses other development proposals under its environmental statutes and the Department has not heard a persuasive argument for changing it.*

64. Section 5D’s use of the phrase “on the beach” is unclear. As MGS sees it, the intent is to restrict development in areas that are unstable, prone to erosion, and that would interfere with sand transport in the next 100 year’s shoreline change projections of the dune/beach boundary is one way to delineate such an Erosion Hazard Area “setback” distance. This section could be entitled “Erosion Hazard Areas” and include a statement of what criteria are to be used to determine the EHA. 16
65. Supports prohibition against projects that would be located on the beach within 100 years in an anticipated 3-foot sea level rise. 71

*Response: Section 5(C) was revised and the words “on the beach” were removed. Erosion Hazard Areas are now defined in the proposed rules and criteria for use in determining an Erosion Hazard Area is contained in that definition. Erosion Hazard Areas are further*

*discussed in Section 7(C) – Unstable back dune areas. The projection of sea level rise was changed from three feet to two feet.*

66. Remove reliance upon an existing seawall since existing seawalls can be maintained and don't mention sea level rise. Keep standard as it is in existing rules. 24, 73

67. Presumption that seawalls will not provide stability undermines the legislative intent that seawalls will be maintained in place. 21

*Response: The sentence "Reliance upon an existing seawall is not sufficient as evidence of site stability" was removed from Section 5(C) of the current draft rules. Projected sea level rise was changed from three feet to two feet over 100 years. The Department believes this requirement is necessary to adequately review all the potential impacts on the sand dune system from a proposed project.*

68. Section 5D basically negates the legislative intent of Section 480-E(9) and should be eliminated. 12, 73

*Response: 38 M.R.S.A. Section 480-E(9) pertains to reconstruction in V-zones that were designated after January 1, 1999 by FEMA. The Department is unsure how that comment directly relates to Section 5(D) and is therefore unable to respond.*

#### **Section 5(D) – Section 5(E) in previous draft**

69. Adopting the proposed standard in 5(D), especially for stable back dune areas, would require additional burdensome application requirements and create the potential for unjustified and unreasonable delays and costs for the property owners including loss of property value. 70

*Response: This section is essentially unchanged from the existing sand dune rules. The Department has processed very few applications that proposed to exceed the building size and height restrictions contained in this section and is unaware of any unreasonable delays and costs that resulted from the requirements.*

70. Building size could be used to create a tiered approach to setbacks or minimum elevations. 16

*Response: The Department has chosen not to require setbacks on lots since sand dune lots tend to be relatively small in size and are subject to local setback requirements. Minimum elevations are established for some buildings as outlined in Sections 6(E) and 7(C). Not all projects require elevation to meet the standards of the Natural Resources Protection Act.*

71. Change to one foot and 60 years. 24

*Response: No change. This section contains the same requirements as Section 5(C) for the reasons given in response to Comments 53-63 under that section.*

72. Under 38 M.R.S.A Section 439-A(7)(D), the Mandatory Shoreland Zoning Act, the total ground area of a house is limited to 1,500 square feet. The proposed 2500 square foot

ground floor in a 35-foot high house would allow for three floors and 7500 square feet of living space. I suggest that a 1500 square foot ground floor (3 stories – 4500 square feet of living space) is more in keeping with regulations that are intended to protect the dune system and consistent with shoreland zoning. 71

*Response: Section 5(D) does not limit a house to a ground area of 2,500 square feet. Instead it adds additional requirements that an applicant would need to meet if proposing a house of that size. The Department realizes that the sand dune rules are not consistent with all aspects of shoreland zoning, but it determined that the inconsistencies could not be resolved through this rule-making endeavor.*

73. Objects to how the height of a building will be determined. Thinks that he shouldn't have to use the natural elevation, if an abutting lot owner has filled in the past. Also wonders why, if he built another cottage in front of an existing cottage on his lot, he would have to determine the elevation of the new structure based upon a measurement taken 5 feet from the existing cottage's foundation. Does not understand why the measurement was changed from "highest" to "lowest" in the current draft rules. Would like to amend second paragraph to read "when determining the height of a building, the measurement is taken from the existing, highest natural elevation within the building's footprint or the elevation used by the municipality when determining compliance with local ordinances. If an abutting lot has been elevated, the natural elevation of the lot upon which the proposed building will take place may be elevated so that it is no higher than the abutting elevated lot, provided, however, the lot is not on a frontal dune." 70

*Response: The Department has determined that it is more appropriate to use natural elevation to achieve a uniform height throughout the sand dune system than to allow people to elevate their lots with fill and measure from that fill elevation. The measurement was changed from "highest" to "lowest" because the Department determined that measuring from "lowest" was consistent with the way height is currently measured in reviewing sand dune projects and the previous draft rules were not correctly stating the Department's position.*

#### **Section 5(E) – Section 5(F) in previous draft**

74. Supports no new seawall provision in Section 5(E). 13-14, 16, 71

*No response.*

75. Section 5(F) should be clarified to provide that widening the footing of a seawall is not an expansion since it is allowed by 480-W. 21

*Response: The Department concurs and changed Section 5(E).*

#### **Section 5(F) – Section 5(G) in previous draft**

76. The change to the protection of our shorebird nesting or breeding areas is unacceptable (Section 5(G)). The rules will limit the recovery of endangered piping plovers and least terns. 13-14, 20

77. Support the change in Section 5(F) to include significant wildlife habitat, which addresses earlier concern that piping plover and least tern habitat that was not designated as essential habitat would be inadequately protected. 13-14, 121

*Changes made to Section 5(F) ( comment #77) addressed concern raised in previous draft ( comment #76).*

78. I disagree with Jody Jones of the Maine Audubon. At the public hearing, she asked that you consider Wells beaches in the same vein as other beaches that are essential habitat. By emphasizing the Coastal Sand Dune Rules as protection for the piping plovers, you will make this bird “the enemy.” 81

*No response.*

79. Municipal and private shoreland owners have agreed to work with the Audubon Society to help protect the endangered nesting birds. Doesn’t understand Audubon’s position. 1, 47

*No response.*

80. There does not appear to be any opportunity for applicants to comment on IF&W’s recommendations. 70

*Response: The essential habitat determination is made by the Department of Inland Fisheries and Wildlife pursuant to 12 M.R.S.A. Sections 7751-7756.*

81. Opposes limiting development of a lot to no more than 40% of the lot and defining development to include lawns and other areas filled for landscaping. 29

*Response: The 40% lot coverage requirement and defining development to include lawns and other areas filled for landscaping is unchanged from the previous rules. The Department has received no compelling testimony or comments that would make a case for changing either provision.*

## **SECTION 6: STANDARDS FOR FRONTAL DUNE PROJECTS**

### **Section 6(B)(1)**

82. Section 6(B)(1) of the current draft rules authorizes walkways and driveways to be constructed on or seaward of a frontal dune. There is no sound reason for allowing such structures to be constructed in the frontal dunes. Driveways and walkways not only destroy important habitat for birds such as piping plovers and least terns, but these structures cut pathways through the frontal dunes that allow for storm surges during storm events. These storm surges lead to increased erosion and flooding, and therefore these structures should be prohibited in the frontal dunes. 3, 141

*Response: Section 6(B)(1) is unchanged from the existing sand dune rules. In reviewing such projects the Department considers whether the impacts to dune vegetation, bird habitat, etc. will be unreasonable. Any proposal to cut into the dune system would be assessed for potential impacts from storm surges.*

83. Section 6(B)(1) authorizes the construction of elevated boardwalks that are located perpendicular to the beach face. Although the use of boardwalks is reasonable, the regulations should require that these boardwalks be removable. The removal of these structures during winter months would allow for natural beach processes to resume until the structures are re-installed prior to summer. Further, because non-removable boardwalks often get ripped out by storms in the winter anyway, requiring the use of removable boardwalks would likely save municipalities money since they would no longer have to replace boardwalks damaged during winter storms. 3, 141

*Response: The Department has determined that the incremental environmental benefit of removing boardwalks is not sufficient justification for requiring such action.*

#### **Section 6(B)(4)**

84. Believes requiring vertical additions to change to post or piling foundations should apply to storm damaged buildings only. 4

*Response: No change. All projects needing a permit are required to meet 38 M.R.S.A. Section 480-D(7), the sand supply standard in the Natural Resources Protection Act, regardless of the purpose or nature of the project. The Department has determined that newly constructed buildings or reconstructed buildings on posts or pilings will meet that standard.*

85. Supports the elimination of the second story addition or other dormer addition exemption. 13-14, 65, 67, 89, 90, 91, 92, 94, 142-232

*No response.*

86. All existing homeowners should be allowed to expand their buildings up to 20% if the expansions are landward of the existing structure and if the expansions are constructed on posts. 24, 136

*Response: Buildings located in back dune areas may be expanded up to 20% of lot coverage. To follow the Legislature's intent, as expressed in the NRPA, the department's policy is to limit new construction and reconstruction in frontal dunes to the extent practicable to minimize interference with the movement of sand and water and to minimize the erosion hazard to the sand dune system.*

#### **Section 6(B)(5)**

87. Opposes the exception to allow new construction on frontal dunes surrounded by "developed" lots. 13-16, 27-28, 55, 64-68, 89-94, 115-118, 120, 122-123, 125, 126, 128-133, 135, 139, 142-382

*Response: The Department has determined that a very limited number of lots may potentially meet the requirements in this section. These identified lots are located in highly developed dune areas. More stringent development standards e.g. reduced development limits; dune mitigation and enhancement measures are required for projects subject to this section.*



88. Supports the language proposed to the Board on March 6, 2003 relating to new construction on “developed” frontal dunes and hopes that the language will be adopted by the Board without change. 19, 408

*No response.*

89. Supports change to Section 6(B)(5)(b) preventing the “checkerboard” approach to developing the beaches. 13-14

*No response.*

90. Objects to new construction allowed under Section 6(B)(5) being required to meet the standards for all projects contained in Section 5 particularly 5(D) with the 3 foot rise in sea level and the clause about reliance upon existing seawalls not being sufficient as evidence of site stability. 19

*Response: This comment applies to a previous draft of the rules. The Department subsequently changed the current draft to address these concerns. See Section 5(C) of the current draft.*

91. Most of the additional conditions and restrictions set forth in Section 6(B)(5)(a-g) are not reasonable and sufficiently clear to apprise an applicant of his obligations. 19

*Response: The Department disagrees and has determined that the requirements in 6(B)(5)(a-g) are reasonable and appropriate.*

92. Section 6(B)(5)(d) should be deleted. Local municipal zoning ordinances allow a variance only in the case of hardship. 22

*Response: No change. This subsection is intended to ensure that all options for siting a project in compliance with the rules are exhausted before the project can proceed through the Department’s process.*

93. Section 6(B)(5)(e) is not an appropriate requirement. It would allow DEP staff to be totally arbitrary in determining the building location. Why not state that no building may be located further seaward of a line drawn between the seaward most point of the buildings on adjacent properties. 22

*Response: The Department believes that this is an appropriate use of the Department’s discretionary authority during the review process.*

94. Section 6(B)(5)(f) would limit the developed area outside of a building to 500 square feet. This size is unrealistic since it only provides for essentially 2 parking spaces and 100 square feet of coverage for decks, walkways, etc. It also creates a development standard that is different than the development requirement of 40% for all other lots. 22

*Response: Given the relatively small size of the lots that could meet the requirements of this section, the Department determined that it is appropriate to limit the amount of development on the lot while accommodating a reasonable use of the property.*

95. Section 6(B)(5)(h) requires sand dune mitigation and enhancement as determined by DEP staff. This is not an appropriate requirement since there are no standards given and the requirement is at the arbitrary discretion of DEP staff. 22

*Response: The Department believes that this is an appropriate use of the Department's discretionary authority during the review process.*

96. Section 6(B)(5)(b) is over broad and should be amended to clarify that the lots on both sides of the vacant lot must contain a residential building at the time the Coastal Sand Dune Rules are adopted. 25

*Response: The Department concurs. The current draft of the rules incorporates this suggested change in Section 6(B)(5)(b).*

### **Section 6(C)**

97. Oppose Section 6(C) allowing reconstruction of buildings damaged by more than 50% by an ocean storm-anywhere not just v-zones. 13-16, 27, 65, 67, 89, 91-92, 94, 115-118, 122-123, 125, 126, 128, 129, 130-133, 135, 139, 142-382

*Response: The Department has considered all the written and oral comments made on this issue and has consulted with both the Attorney General's office and the Board, before arriving at its final recommendation. The Department is aware that removing the prohibition on reconstruction of buildings in the frontal dunes that have been damaged by more than 50% by an ocean storm is a significant change from the existing rules. With these draft rules, the Department is seeking to more reasonably protect frontal dunes from impacts, as defined in the Natural Resource Protection Act. The Department believes that it is no longer advisable to prohibit reconstruction except in very limited circumstances; that the property owner must have the opportunity to apply for a permit and to have the proposed project evaluated based on a set of criteria established through the rule-making process.*

98. We do not support the one time limit on reconstruction contained in Section 6C(3). 26

*Response: To obtain a permit for the reconstruction of a building after damage by wave action from an ocean storm, an applicant would be required to utilize a post or pile foundation that would elevate the building one foot above projected sea level rise in the next century. The applicant would also have to comply with all the requirements of Section 5. If such a building could be permitted and is then destroyed again by wave action, the Board and the Department have determined that the building would not be able to meet the standards of the Natural Resources Protection Act, (38 M.R.S.A. Section 480-D), essentially because of the project's location. It should also be noted that this restriction only applies to reconstructed houses in V flood zones, a special flood hazard area subject to additional hazard from high velocity water due to wave action.*

99. I would like to suggest that if a property is rebuilt once following storm damage, that a deed restriction should be recorded with the Registry of Deeds to indicate that the one-time rebuild option has been used, so that the limitation is clear to anyone who may purchase the property in the future. 23

*Response: The Department consulted with the Attorney General's office on this issue and was advised that a deed restriction placed by the landowner in this situation would have limited utility.*

100. Opposes allowing rebuilding after 50% damage from an ocean storm. The general public would ultimately financially support rebuilding in areas that would have been proven to be risky. This would result in higher costs for everyone either through private insurance rates or government-sponsored programs. This is not fair, especially as any building on dunes is detrimental to the beach and hence the public and wildlife. The general public would be asked to pay for something that is not in its best interest and is not in the best interest of wildlife habitat protection. 117

*Response: As noted by Lou Sidell of the State Planning Office in testimony before the Board on March 6, 2003, the National Flood Insurance Program is self-sustaining and funded by flood insurance policy holders. The Department is unable to predict whether private insurance rates would increase if rebuilding is allowed after 50% damage from an ocean storm or whether government sponsored programs would have higher costs as a result of the rebuilding.*

101. Proposed rules state that the damage must be due to wave action from an ocean storm. We support this clarification. 26, 407

*No response.*

#### **Section 6(D)**

102. Setbacks should be applied which would serve to move buildings back from the encroaching sea. 71

*Response: No change. Given the generally very small size of lots in sand dune systems and the requirement for post or pile foundations on reconstructed buildings, the Department does not believe that setbacks would have any significant practical impact on protection from the effects of sea level rise.*

103. Believe that the rules should require that structures be built or reconstructed as far back on the lot as possible and that sand dune mitigation and enhancement measures, such as restoration of dune topography and provision to enhance natural vegetation should be undertaken. 16

*Response: The rules do require that new construction be located as far back from the beach as possible and require consideration of sand dune mitigation and enhancement measures. The Department has chosen not to apply these same requirements to reconstructed buildings. The Department believes that with the requirement to elevate the new and reconstructed buildings on post or pile foundations, the imposition of the additional mitigation measures are not required for reconstructed buildings to meet the standards of the Natural Resources Protection Act.*

#### **Section 6(E)**

104. Supports the requirement that new or reconstructed buildings in frontal dunes and unstable back dunes be elevated on posts or pilings to allow free flow of sand. 2, 13-15, 20, 65, 67-68, 89-92, 94, 142-232

*No response.*

105. Do not support requiring rebuilt properties to go on posts because it could result in the loss of living space due to South Portland's height restrictions. 7, 49

*Response: The current draft rules include a variance provision in Section 8(B) that would allow for a variance from this requirement in the case of undue hardship when no practicable alternative exists. The rules also allowing vertical additions up to 35 feet in height.*

106. Section 6(E) might be clearer with some added punctuation. To allow for the movement and be elevated either 1) three feet above the highest existing elevation within the building's footprint; or the highest natural elevation measured 5 feet from the corners of the existing building foundation; or 2)... 23

*Response: The Department changed the punctuation of this section to improve clarity.*

107. We propose that DEP staff be given greater flexibility, on a case by case basis, in determining when to require post or pile foundations for a reconstructed building. 26

*Response: The Board and Department have determined that reconstructed buildings in frontal dune areas must be placed on posts of pilings to comply with the sand supply standard in the Natural Resources Protection Act (38 M.R.S.A. Section 480-D(7)). The current draft rules include a variance provision in Section 8(B) that would allow for a variance from this requirement in the case of undue hardship when no practicable alternative exists.*

108. The rules do not anticipate flood plains rising and in some places, may not require new structures to be elevated sufficiently to allow for both active sand transport during future flood events and reduced flood hazards in adjacent areas. The rules will be more consistent if all parts of the dune system anticipate the impact of sea-level rise, including the horizontal and vertical migration of flood plains. 16

*Response: The Department agrees that these rules do not attempt to address issues that might affect both the coastal sand dune system and coastal wetland areas located adjacent to, but not in the coastal sand dune system. Coastal wetland areas are subject to another set of rules, Chapter 310, Wetland and Waterbodies Protection Rules. When reviewing proposed projects with potential direct and indirect impacts to two resources, the Department considers the impacts on both within the standards of the law and rules. The potential impacts of sea level rise on coastal wetlands are not the subject of these rules. All parts of the coastal sand dune system are subject to Sections 5(C) and 5(D), which anticipate sea level rise.*

109. With regard to sand dunes, the legislative mandate is clear and the following sound environmental standard was set "If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system." There is universal agreement among knowledgeable scientists that constructing permanent structures

on mobile sand dune systems will run afoul of this standard. Even buildings on pilings cannot meet this standard because dune grass, an essential component of a sand dune system will not grow in the shade beneath a building. 66

*Response: The Department recognizes the importance of dune grass as a central component of the sand dune system. However as the standard prohibits unreasonable impacts, the Department seeks to balance the needs of the environment with those of individual property owners. The rules contain lot coverage standards that new development may not exceed 40% of individual lots in all areas and buildings may not exceed 20% in frontal dune areas. The Department feels that this represents an appropriate balance between the needs of the sand dune system to function naturally with the rights of the individual property owner.*

110. We feel that proposed rule changes should include flexibility to accommodate existing public restroom facilities by allowing them to expand and to make provisions for handicap accessibility, and by not requiring that they be elevated on posts. 138

*Response: The current draft rules were changed to allow for handicapped accessibility and do not require public restroom facilities to be elevated on posts or piles.*

## **SECTION 7: STANDARDS FOR BACK DUNE PROJECTS**

### **Section 7(B)**

111. Believes there should be some leeway to allow a building to expand beyond 20% for things like outside stairways or ground floor bathrooms for older people. 136

*Response: The requirement that no more than 20% of a lot may be covered by buildings is in the existing rules. It is the maximum amount of building coverage that the Board and Department determined could be allowed on individual lots while still allowing the standards of the Natural Resources Protection Act to be met.*

### **Section 7(C)**

112. Section 7(C) is based on a map of unstable back dunes. This map is marked up copy and there is only one, with no indication of source. Any such regulation should be based on published information with references to scientific basis. This section should be deleted or based on widely published maps that give the scientific basis of the mapping. 21-22, 24

*Response: In reviewing projects under the existing sand dune rules, the Department relied upon the so-called "brown zone maps" prepared by the Maine Geological Survey. These have been determined to be lacking in specificity for planning and regulatory purposes. In consultation with staff of the Maine Geological Survey and in response to comments, unstable back dune areas will now be determined by the methodology identified in Section 3(Q) for defining Erosion Hazard Areas.*

113. We are concerned that there is no definition of unstable back dune areas. 26

*Response: The previous concept of unstable back dune areas has been replaced with the more appropriate scientific methodology for defining erosion hazard areas.*

114. Concerned that in back dune areas that have been dry for years, people with small houses might have to go on posts and have to use living space for utility structures. Why can't breakaway foundations be used to allow for water rise. 136

*Response: The Natural Resource Protection Act (38 M.R.S.A. Section 480-D(7)) requires the Department to consider whether a project will unreasonably interfere with the natural supply or movement of sand within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system and not just take into consideration flooding waters alone. Breakaway foundations in certain areas of the back dunes may unreasonably interfere with the sand supply. Individual project analyses would identify the appropriateness of a particular foundation type.*

## **SECTION 8: VARIANCES**

### **Sections 8A(1)**

115. Oppose variance from Sections 5(B)(3), 6(B) and 6(C) allowing new construction on undeveloped frontal dunes. 13-16, 20, 27-28, 55, 65-68, 89-94, 115-118, 120, 122-123, 125-126, 128-133, 135, 139, 142-382

*Response: Given the constitutional requirements as currently being interpreted by the courts, application of these regulations without an opportunity for a variance from these three provisions might, in some factual situations, be found to effect a taking without compensation.*

116. What will be the long-term impacts on Maine's beach systems of allowing new construction on undeveloped frontal dunes? 9

*Response: The Department is concerned about the long-term impacts of new construction on undeveloped lots as well as all other areas of the coastal sand dune systems. But the Department also has to balance impacts to sand dune systems with concerns about the legal soundness of its regulations, as interpreted by the Courts, and must avoid an unconstitutional taking of a person's property without compensation. The Department believes that the current draft rules contain numerous provisions to help ensure that long-term impacts from new construction, if allowed at all, will be minimized to the greatest extent possible.*

117. How can Section 8(A) be authorized as appropriate under the Natural Resources Protection Act where there is no exception for "undue hardship" or "no practicable alternative". If building on a frontal dune will "unreasonably increase the erosion hazard" as I believe it will, a variance is not permitted. 20

*Response: The statute has to be interpreted by the Department in a manner that complies with constitutional limitations on the state's power to regulate. Therefore these regulations interpreting the Natural Resources Protection Act must take into consideration the constitutional prohibition on taking without compensation. In addition to being deemed eligible for a variance under Section 8(A)(1), an applicant must also demonstrate that the proposed project meets the applicable standards of Sections 5 and 6 to determine that the project will not unreasonably increase the erosion hazard.*

118. The proposed exception and variance provisions for new buildings on the frontal dunes will violate the Natural Resources Protection Act and the Board will be exceeding its rulemaking authority. There are no exceptions to the clear language in 38 M.R.S.A. Section 480-D(2), (6) and (7). There is no mention of takings analysis or undue hardship. The BEP is not authorized to amend rules because of a threat of the outcome of a lawsuit. 13-14

119. Maine's sand dune law does not need an exception or variance to withstand takings scrutiny. 13-14, 28

*Response: The Board's rule-making authority includes, by necessity, the interpretation of statutes consistent with constitutional limitations. The variance provision does not exempt applicants from the requirement that they meet the statutory standards; it allows the Board to evaluate applications on a case-by-case basis.*

120. The purpose of Section 8(A)(1) is unclear and the language used in Section 8(A) is also nonsensical on its face. 19

*Response: The language used in Section 8(A) is derived from the court's interpretation of the constitutional prohibition on takings without compensation and it reflects the analysis a court is likely to apply in a challenge to a Departmental decision. It is parallel to variance language commonly used in other land use and environmental laws.*

121. Believes that the variance standard may be written too broadly. Seems to use Penn Central case as a guide but fails to account for the last part of the test, which requires an examination of the character of the government's action. We believe that in order to have a balanced variance provision, it is critical for the decision-maker to bear in mind the character of the government action, which for purposes of these regulations should include a consideration of the importance of protecting the coast sand dune resource. Also even if the rules prevent a property owner from erecting any structures on his/her property, the remaining economic value associated with the mere right to access the beach has sufficient value such that the application of the rules would not constitute an "undue hardship" or a regulatory taking. 3

122. The proposed language for Section 8 is not narrow and could invite significant development of the few remaining dunes in the state. Section 8(A)(1)(b)(ii), (iii) and (iv) will be interpreted as permissive by anyone wishing to build on frontal dunes. 13-14, 20

*Response: The courts rarely use the Lucas case to find a taking. The Departmental decision at issue must be found to result in an elimination of any use for the property and a property value of zero for a court to find a takings per se under Lucas. The U.S. Supreme Court now seem inclined to more often apply the general principles of the Penn Central test in most cases. The Maine Law Court also appears to apply a streamlined version of the Penn Central test. Courts have thus far found that the sand dune rules promote a legitimate public purpose. The language already contained in Section 1 of the rules sets forth the important public purpose of the rules and there is no need to discuss it again in the variance section.*

123. The revised sand dune regulations at issue here, when taken as whole, certainly do not violate the fifth amendment but there is language in the variance provision that gives one pause. Specifically, the provision that allows a variance only for lots of record as of August

1, 1983 (Section 8(A)(1)(b)(i)) should be omitted. Also, the provision that bars a variance if the project “alters the essential character of the locality” should be deleted. By giving away just a little, the DEP gains a lot of credibility; the state, the agency will reduce its costs and avoid delays in implementing these controls; and more importantly, we will improve the overall sustainability of these important regulatory controls. 62

*Response: Courts generally consider the reasonable expectations of a property owner and in this analysis look at whether the restriction was in place when the property was acquired. A strong argument can be made that a property owner did not have a reasonable expectation to build a new structure in a frontal dune in the face of a prohibition. The provision that barred a variance if the project altered the essential character of the locality was removed.*

124. Suggest adding following standards 1) The granting of the variance will not substantially reduce or impair the use of abutting property; 2) The granting of the variance is based on a demonstrated need, not convenience, and no other feasible alternative is available; 3) A variance may be granted only pursuant to this subsection for a single family dwelling that is the applicant’s primary year-round residence. 71

*Response: Section 5(B)(4) and Section 8(A)(2)(a), by restricting the location of the project, will reduce impacts on abutting property owners. Convenience is not a basis to obtain a variance and an applicant is required to demonstrate that there are no practicable measures or alternatives available. The constitutional protections under the taking clause are not limited to year-around residents nor are they limited to residential construction.*

125. I understand the apparent need for variances from the sand dune rules. However, considering existing inconsistencies in the application of the rules, I have to wonder at any administration of variances and just how many loopholes we are creating to circumvent what is hailed across the U.S. as the best and most objective protective legislation for coastal dunes. 141

*Response: The revised rules, as a whole, will provide greater clarity for applicants, Department staff and the Board. The Department endeavors to apply its regulations as consistently as possible, but as the courts have noted different factual situations may require different outcomes.*

126. Section 8 is a needed response to allow a mechanism for property owners who have unusual circumstances, i.e. hardship, to seek a variation in the standards from the Board. The excellent criteria for a variance clarifies that variances should be the exception rather than the rule. 15

*No response.*

127. Supports the language proposed to the Board on March 6, 2003 relating to new construction and frontal dunes and hopes that the language will be adopted by the Board without change. 19

*No response.*

## **Section 8(A)(2)**



128. 20% coverage rule for building new homes on vacant lots is good. 136

*No response.*

129. Opposes new development on the dunes as inconsistent with maintenance and protection of the dunes, but if it is approved any new houses should be limited to 1500 square foot ground floor, and be located at least 150 feet from the mean high tide. 71

*Response: The current draft rules allow new buildings approved under this section to cover up to 20% of the ground area of a lot. This requirement is consistent with the existing sand dune rules and also with other sections of the current draft rules. It allows a reasonable amount of building coverage while minimizing impacts to the sand dune system. The Department determined that it is more appropriate to establish the building location on the lot, that is the greatest distance possible from the beach, through the permitting process rather than imposing an arbitrary setback distance.*

130. Didn't like 8(A)(2)(e) essential character language. Would allow the Board to deny any variance it happens not to like. 62

*Response: This language was in a previous draft of the rules. It was removed from the current draft.*

131. Those who demonstrate eligibility for a variance under 8(A) must nonetheless meet the provisions of Section 5 and 6 of the regulations-but if they can meet these, they almost certainly don't need a variance. It is because of the stringency of Sections 5 and 6 that a variance mechanism (to avoid "taking" problems) is needed. 62

*Response: This comment was made about a previous draft of the rules, before changes were made to Section 6(C) and other revisions to Sections 5, 6 and 8.*

### **Section 8(A)(3)**

132. Add the words "wave action from" as noted in the following sentence: "A variance will not be granted under Section 8 when a permit has been granted under this variance provision for the same deeded lot if the previously permitted building on the lot was destroyed by the encroachment of water or **wave action from** an ocean storm." 140

*Response: The Department concurs and the change was made.*

133. If this section has been added to prevent a taking, why does it limit a property owner to a single variance? If a property owner is granted an "undue hardship" variance, and the resulting structure is then destroyed by a storm, hasn't the property owner who, by Section 8(C) as proposed, is now prevented from doing anything with his property suffered a taking? 62

*Response: If a building is destroyed by wave action from an ocean storm, the government's interest in regulating that property becomes more compelling. The Board and the Department have determined that a second building, on the same property that already had a building*

*destroyed by an ocean storm, would be unable to meet the standards of the Natural Resources Protection Act (38 M.R.S.A. Section 480-D).*

#### **Section 8(A)(4)**

134. Add an additional notice provision in cases where parties are applying for a variance so not only abutters are notified but also any person who owns land located within 150' of the property to be developed. 25

*Response: This comment was made about a previous draft of the rules. This additional notice provision was added to Section 8(A)(4) of the current draft.*

135. Concerned that the variance provision gives a lot of discretion to the Department in determining what constitutes an “undue hardship.” In order to ensure that these variance decisions are properly made, we believe it is critical to ensure that the public is able to fully participate in these determinations. Section 8(A)(4) requires notice to persons who own land within 150 feet of the boundary of the property to be developed-this should be extended to 1000 feet for permits and variances; and the Department should create a notice list for all variances and permits requested under these rules. All interested persons should receive notice of the request for a permit or variance, and the notice should adequately describe the request. 3

*Response: No change. Given the small size of lots on frontal dunes in Maine, the Department has determined that 150 feet is adequate to notify property owners who may be immediately affected by the proposed project. Making a notice list for all variances and permits requested under these rules would be costly and an administrative burden to the Department. 150*

136. Oppose Section 8 granting the Department the authority to grant variances. The issue of granting variances to the sand dunes rules is of great significance and should be granted, if at all, by the Board and not the Department. This represents a significant policy change. 3, 13-14

*Response: Although it represents a change for the Department to have the authority to grant a variance under the sand dune rules, the Department has considerable experience and expertise in dealing with all aspects of development in sand dune systems. The Board of Environmental Protection has the authority to assume jurisdiction of any application under Department Rules, Chapter 2(17) and is required to consider all appeals of Department actions.*

#### **Section 8(B)**

137. Oppose Section 8(B) allowing a variance in cases of undue hardship from Section 6(E), requiring new construction to be elevated on posts or pilings. The expense will be significant and it will be relatively easy to claim undue hardship thus making Section 6(E) frequently ignored. 13/14

*Response: The Department does not concur that it will be relatively easy to claim undue hardship. The Department anticipates that, for an applicant to obtain a variance from this section, the process will be very rigorous.*

138. Section 8(B) includes some of the same standards included in Section 6(B). My comments on Section 6(B) are applicable to Sections 8(B)1 and 2. 22

*Response: See responses under comments numbered 92-95 in Section 6, Standards for frontal dune projects.*

## **SECTION 9: STANDARD CONDITIONS OF PERMITS**

### **Section 9(A)**

139. We can support this provision about shoreline recession if the DEP would make it clear that the shoreline recession results from a natural process and not the result of some man made event. 26

*Response: This standard condition is unchanged from the existing rules. The Department has determined that it is an appropriate response to shoreline changes however caused.*

### **Section 9(C)**

140. Section 9(C) refers to natural dune vegetation, but is describing native dune species. I suggest changing this from natural to native, as appears to be the intent. 23

*Response: The Department removed the word “Natural” to be consistent with Section 3(P). The Department determined that the plant species listed in the definition of dune vegetation, although not all native to Maine, are appropriate plant species for maintaining a coastal sand dune system.*

### **Sections 9(G) and (H)**

141. I am curious as to the reason the state would allow two years for initiation and five years for completion.

*Response: The time lines for project initiation and completion in Sections 9(G) and (H) are identical to current requirements for other Natural Resource Protection Act projects. Given the sometimes complex interplay between various local and state regulations, the Department has concluded that two years for initiation and five years for completion is reasonable for applicants while at the same time putting some time limitation to allow for changing regulations.*

## **GENERAL DUNE COMMENTS**

### **SAND DUNE SYSTEMS ARE IMPORTANT RESOURCES:**

142. Coastal sand dune systems are important resources in the state, have great scenic beauty, and exceptional environmental value for all Mainers. Sand dunes are important in protecting coastal communities from storm damage and erosion. In addition, the survival of the least tern and the piping plover are linked to the availability of coast sand dune habitat, where these endangered shorebirds breed, nest, and raise their young. Structures on frontal dunes interfere with the natural movement of sand; thereby causing erosion that ultimately destroys precious habitat, diminishes the public’s enjoyment of beaches, and threatens

public safety. Support the retreat policy, the long-term strategy to retreat from unsafe locations where properties have been built on Maine's beaches. 13-14, 126, 142-382, 386

143. From a geological perspective, dunes are very dynamic. They form through storm action and respond to surf and rising sea level. A healthy dune system is the best defense against coastal flooding, erosion, storm damage, and sea-level rise. 16

144. For the homeowners in the Pemaquid Beach area, the sand dunes are particularly important – they are our first-line of defense against storms. They provide the sand necessary to flatten the beach's contour, so that wave energy is spent over a broader area. Without the dunes, homeowners well back from the beach could face serious property damage. The dunes help maintain the salt marsh behind them, which is home to several species of migrating and nesting waterfowl. The beaches, the dunes and the marsh are a complex, intertwined system. When we interfere with one component, we run the risk of destroying the whole. In your deliberations, I urge you to maintain protection of our dunes at all costs. 137

*Response: The Department certainly concurs with the statement that Maine's sand dune systems are important natural resources, have great scenic beauty and exceptional value for all Mainers. Healthy sand dune systems are the best protection against coastal flooding, erosion, storm damage and sea level rise. The Department also recognizes that there are public and private interests to be considered in regulating activities within these environments. In addition, there is wide variability in the degree of development among these sand dune systems, ranging from extensively developed coastal communities to relatively pristine areas. The amended rules represent a very considered approach to balancing the needs of the natural environment and public and private interests. The requirements in the rules, particularly the new requirement that all new or reconstructed buildings in frontal dune areas be elevated on post or pile foundations, are designed to protect the sand dunes from degradation and encourage the enhancement, wherever possible, by facilitating the movement of sand and water within the sand dune system.*

#### **GENERALLY SUPPORT THE RULES, BUT THEY SHOULD BE MORE RESTRICTIVE:**

145. I am writing to express my dismay at the prospect of weakening the present Sand Dune Rules. Vanishing habitat, ATV use, overcrowding of beaches and lack of public conservation awareness all contribute to the decline of shorebirds and other coastal species. Please work toward the preservation of the Sand Dune Rules and even their strengthening. 127

146. Our beaches deserve better care than what we have given them in the past and what SOS plans for them in the future. You have the knowledge and the authority to do what the beaches need. Do not let yourselves be bullied, please. 69

147. Ogunquit has a long and honorable history of protecting its beach. In the hard years after World War I, before Ogunquit had any municipal status, the populace took on the ordeal and expense of forming the Ogunquit Beach District in order to tax themselves extra to enable them to go to court to buy back the beach which the state had sold miles of for about

\$1,000 to a Mr. Tibbetts of Wells who was actively developing the northerly reaches of his property. Back then the state was a dope, ready to sell out one of its treasures as real estate.

148. I applaud the DEP's efforts to strengthen sand dune regulations. 71, 132

149. Oppose the proposed changes to the Sand Dune Rules. Need more protection. 88

150. Every effort should be taken to protect the integrity of Maine's gorgeous world famous coastline. Proposals to weaken our sand dune rules are just plain stupid. 134

151. The number of natural beaches is limited. Our population is growing. Beaches should be able to be enjoyed by all people and not be at the mercy of development, which would benefit only a few. 117

152. I want to go on record as strongly opposing any and all proposals to weaken/change laws/to permit variances, etc. in these fragile and rare coastal communities. I believe any reasonable person would agree that we have lost far too many of these dynamic and biologically significant communities to development. They have even been further degraded from an aesthetic standpoint by the construction of "mega homes" and "tower houses" in many cases. 93

153. I believe that the stricter regulations in our land-use ordinance have enhanced land value and tax revenues. Views of the ocean, a beach that can be walked at all levels of the tide, habitat for wildlife, and a buffer from wind and waves all enhance property values town wide. I have discussed the economic value, but I believe the most important reason to protect the beach is because it is an important part of our natural heritage. It would be an immeasurable loss to the people Maine to lose our beaches. 71

*Response: With these amendments to the Sand Dune Rules, the Department has attempted to strike an appropriate balance between public and private interests and to accord the highest level of protection to the more natural pristine areas. The Department sought to apply more current scientific information to improve our review procedures and to require more appropriate construction and enhancement techniques to allow for natural processes to occur within the sand dune systems.*

#### **GENERALLY OPPOSED TO RULES, THEY ARE TOO RESTRICTIVE:**

154. Object to those proposing more restrictive regulations because the constant rebuilding of homes and businesses is costly and is at the expense of others. We home owners pay for our own shoreland insurance at our own expense. 1

155. Object to the potentially devastating effect these rules would have on our property interests. 5

156. The proposed amendments to the sand dune rules are far worse than the current rules with their business-unfriendly red tape. The new rules could very well put many of our hotels out of business and render our real estate worthless. 11

157. We are opposed to any changes to the current regulations regarding sand dune rules. 18, 131

158. I would ask that you do not let these proposed rules become law on the basis that they are too restrictive, and they most certainly would cause hardship among property owners. 50

159. The current proposed sand dune rules are totally unrealistic. I certainly agree with the conservationists in maintaining the quality of Earth and Life however, there must be some middle ground involved from which both sides can work. A hard-line approach will not work in this situation. 61

160. I am opposed to the proposed sand dune rules that were discussed at the Wells hearing. 76, 404-406

161. We are property owners at Pine Point Vista Condominium, 205 East Grand Ave., Old Orchard Beach. We are not in favor of the proposed amendments to Chapter 355, Sand Dune Rules. We believe they are too restrictive and potentially very damaging to the rights and interests of shoreline property owners and their communities. 56, 94-110

*Response: Most of these comments focused on the existing sand dune rules which prohibited the rebuilding of storm damaged buildings and the variance provision in the previous draft of these rules that would have required a variance to construct a building damaged by more than 50% by an ocean storm. The restriction in the previous draft of the rules to require a variance was amended. The current draft rules now allow for the one time rebuild of buildings damaged by more than 50% by an ocean storm.*

#### **CONSISTENCY WITH NATURAL RESOURCES PROTECTION ACT:**

162. Are the proposed regulations consistent with legislative intent embodied in the underlying statute? 9

163. We are opposed to the proposed amendments and have serious reservations about the Board's authority to enact such legislation pursuant to the Natural Resources Protection Act. We believe these rules overstep the guidelines and the intent of the Act and we would ask the Board to re-examine their legal standing on this issue. 17

164. Regulations far exceed authority given to DEP under the Natural Resources Protection Act. They prohibit and regulate activities that have no direct impact on the sand dunes. 22

165. These Rules unfairly impact the homes and livelihoods of many Maine citizens and summer residents, and I do not believe that the legislature intended this form of regulation. Parts of the rules are not legislatively justified. The proposed changes compound the problems. The Department and Board should withdraw this proposal and reexamine its authority. 73

*Response: The legislature has given broad authority to the Board of Environmental Protection to "adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the Department is charged with administering." (38 M.R.S.A. Section 340-D(1-B)) The Sand Dune Rules establish regulatory criteria for activities that impact the sand dune system, a resource of state*

*significance. The legislature has charged the Board with protecting the sand dune systems from degradation and with encouraging their enhancement. The legislature, in its directive to the Board, noted that both minor alterations and major alterations of the sand dune systems pose a substantial threat to the environment and the economy of the state.*

166. Natural Resource Protection Act doesn't contain any outright prohibition on new structures in frontal dune systems and the DEP's outright prohibition is contrary to the express provisions of the governing statute that clearly allows such work if an applicant can make the required showing. 19

*Response: Section 8, Variances, has been added to the rules expressly allowing an individual to file an application with the Department to construct a building in a frontal dune location. In addition to meeting the standards established under this section, an applicant must demonstrate compliance with all the applicable standards in the rules for construction in frontal dunes.*

### **PRIVATE PROPERTY RIGHTS:**

167. Since when has recreation on private, municipal, state or federal properties become a right? Taking private property for public recreation is not a right nor is it a necessity of life. 1

168. Certain of the proposed rules appear to be based upon an assumption that the sand dunes are public property and that on all adjacent beaches the public has recreational rights. The sentiment that beachfront owners are depriving the public of rights because of the existence of their homes is simply ill founded and should not be used to justify restrictions on private property unauthorized by statute. 73

169. Coastal shoreland property owners are not the cause of the geologic changes taking place. Instead they are victims, and those that clothe themselves as environmentalists are "piling-on" in an effort to gain access to private property. 1

170. "Taking" our land by adding more restrictive regulations is wrong and violates our Fourth amendment rights. 1, 47, 394

*Response: The Department recognizes that portions of the sand dune system are privately owned. The variance provision in Section 8 provides a safeguard against the unconstitutional taking of private property.*

171. The DEP's long view of the problems to be addressed and their regulatory approach to these problems is in many respects both laudable and appropriate. However, does the DEP's approach take into sufficient account the private property rights, the constitutionally protected rights, of those who own the foreshore, including immediately adjacent sand dune portions of that shore land. Do the latest revisions to the state's sand dune regulations, in combination with the stringent regulations already in place strike an appropriate balance, a constitutionally permissible balance, between public interests and private property rights? A lot will depend on how the DEP reads and interprets the literal language of underlying statutes and these regulations; on its awareness of, and sensitivity to "taking" problems; and perhaps most importantly, on how the DEP finally drafts and applies the variance provisions of these regulations. 62

*Response: The police power exercised by the Board in the sand dune rules represents an appropriate extent of regulation of private property in the public interest. The variance provision provided in Section 8 provides constitutional safeguards for property owners. See also responses to comments addressing Section 8(A).*

172. I would like to make the following points: 1) The state should not dictate local zoning; 2) The state should not dictate to people who purchased property years ago; 3) If people cannot use the land, who will reimburse them the fair value or better pay off the mortgage for land and property values that will clearly fall; 4) If people cannot use the land/and property who will pay the town for lost tax value; 5) Why should some state bureaucrat dictate on clearly local issues? 34

173. Concerned that the draft sand dune regulations do not strike an appropriate balance among the competing policy goals of maintaining individual property rights, protecting public environmental assets, improving public safety, and preserving local property tax bases. 9

174. The DEP rules are being made without sound basis or reason and Scarborough stands to lose a very large tax base. We have photos showing ocean waters farther away from our house than in the early 1900's. The dunes have become greater each year and it seems we gain 10 to 20 feet each year. If rules and regulations are being made, let them be made where there is cause. These rulings will only give cause to devalue our properties on the water. 87

*Response: The regulations are not intended to be nor do they establish a local zoning mechanism. The state is exercising its legitimate police powers as allowed by the constitution to protect a valuable state resource and promote the public interest while preserving individual property rights. With regard to impacts on property values, the variance provisions in Section 8 provide safeguards to landowners property interests as required by the Maine and U.S. constitutions. The sand dune system is a dynamic system. The rising sea level and the landward migration of the dunes make a compelling case for the need for these regulations.*

#### **NEW RULES ARE MORE CLEAR AND CONCISE:**

175. Department staff is to be highly commended for their efforts in preparing the latest draft – this draft is much clearer and more concise than previous drafts. This latest version of the rules is the clearest set of Sand Dune Rules produced to date. 26-27

176. I think that the current draft is much easier to understand and should be easier for property owners to follow. The current draft of the rules addresses a number of concerns that were repeatedly voiced: 1) Estimating sea level rise at two feet over the next 100 years, 2) Addressing the basis for property valuation and offering property owners another option in safeguarding their interest, and 3) Allowing properties to be rebuilt once. 23

177. There seems to be a perception of uneven interpretation of the existing sand dune rules, which I think will be improved and hopefully resolved by the simpler structure of the new rules. 23



178. The Department proposes to consolidate and simplify the Rules, which is a welcome change. The existing rules are so confusing that inconsistent actions relating to permits, or determinations of exemption have been commonplace. 73

*Response: The Department appreciates these comments.*

179. The processing of applications for permits is inconsistent. Whenever I visited the coastal dunes along the coast, I was and still am impressed by uneven decision-making and lack of enforcement. This is not rampant and some examples are probably more than fifteen years old. However, I have to wonder what coastal residents must think as they observe one application being denied and another forging ahead at full steam and other activities being ignored. Some of these stem from insufficient knowledge at the municipal level and others clearly derive from lack of knowledge within the DEP. Let me be quick to add that many of those I have worked with in the DEP over the years are excellent, but that competence is far from a general trait. I attribute this to staff turnover and the general absence of institutional memory. 141

*Response: The current draft rules clarify many issues that caused confusion in the past and led to inconsistencies. Upon adoption of the rules, Department staff will hold public informational meetings to assist municipal officials and interested members of the public in understanding the new rules.*

#### **RULE MAKING PROCESS/PUBLIC HEARING ISSUES:**

180. I would like to thank all of you for taking the time to listen to all of the comments made at the public hearing (August). I do appreciate the opportunity to express my concerns regarding the proposed sand dune regulations. 12, 70, 394, 398-399

*No response.*

181. SOS Wells has asked many times to be allowed to have input into the development of the sand dune rules and yet we have not been allowed to participate in the process. SOS Wells stands ready to work with the department at any time when they will work with us openly and fairly. 12

182. I think that there needs to be recognition that besides the state experts, whom I do respect, there are local groups and local individuals that have amassed tremendous accurate, sound information about the local situation. Their input should be accessed by the DEP. I really hope that you will think about how you structure the process in continuing towards getting these regulations in place and for the future so that we can work for a common goal rather than as adversaries who are defending what we consider to be our safety or our homes. 393

183. Would ask the State of Maine to consider the long-range effect to the economy, taxes, reluctance of banks and insurance companies to become involved, and ways of life being affected by these rule changes. We believe that a more positive approach is needed by the BEP and would ask that they sit down with homeowner associations to work together on erosion, storm damage, the environment and Maine citizens' concerns. 4

184. Opposed to the closed and precipitous process by which the draft rules were apparently developed and are now to be promulgated. Request that the Department withdraw these proposed rules (August) and commit to a more deliberate and open process to consider any revisions that the Department believes are necessary. We request an opportunity to consult with the Department and to offer our views on how the Department's goals can be achieved with less dramatic restrictions and impact upon the families that have owned and maintained coastal homes for many decades. 5

*Response: Although the rules were not developed through a stakeholder process, the Department actively sought input on proposed rules from interested parties prior to beginning the formal public hearing process. The Department participated in both the Saco Bay and Wells Bay Beach Planning efforts and considered specific recommendations made by both of those committees.*

185. The level of emotion demonstrated at the August public hearing should tell the Board that the stakeholder process has failed in this instance and that the Rules themselves need to be re-examined. 73

186. Recommends that a revised set of rules is promulgated and the public comment and hearing process be reopened. 6, 21, 77, 391, 407

187. I am formally requesting these rule changes be tabled (August) and that the board recuse itself from making any and all judgments with respect to this very significant issue. 30

*Response: These comments were directed at the first draft of the rules that were the subject of a public hearing held in August of 2002. A revised set of rules was drafted and a new public hearing held on March 6, 2003.*

188. I find it very inappropriate to hold such an important public hearing at 1:30 PM, when most people are working and paying state income tax that pays for your department. 34, 52

*Response: Although the meeting began at 1:30 p.m., an evening session was held to accommodate individual work schedules. A two-week comment period after the public hearing allowed individuals to submit written comments to the Department.*

189. The public hearing was inadequately advertised and the facilities were inadequate. The format of alternating positive and negative comments was poor. 57

190. The DEP/BEP has been very lax in its notification process of the proposed changes to the Sand Dune Regulations. I believe that as a matter of course all affected property owners should have been notified of the proposed changes and the time of the hearing as all towns do with zoning issues. 54, 57, 70, 395

*Response: The public notice was given in accordance with the procedures in the Maine Administrative Procedures Act. It would be extremely costly and burdensome to attempt to directly notify every property owner that could be affected by the rules. In retrospect, the facility for the August hearing in Wells was certainly inadequate in size. At the earliest possible time available, the hearing was moved to a larger facility. Allowing persons who wish to speak in*

*favor of and opposed to the proposed rules provides the Board with a balanced perspective throughout the hearing process.*

191. The Board should not have permitted Maine Geological Survey to testify in support of the proposed rules with its version of facts without a rebuttal. 73

*Response: The Department welcomes comments from other state agencies with expertise or interests on this issue. Any person wishing to provide testimony that disagreed with the testimony provided by the Maine Geological Survey was given an opportunity to do so.*

192. Should have been a redline version or side by side of the draft in order to compare the proposed changes to the existing rules. 6, 70

*Response: Because the sand dune rules were being repealed and replaced and the entire content of the rules was re-arranged, a redline version would not be meaningful. The Department acknowledges that a side by side analysis of the draft rules would have been useful to assist the public in understanding the proposed changes.*

193. DEP recommendations with misspellings and inadequate research should be more scrutinized before public hearings.

*No response.*

#### **STAKEHOLDER PROCESS:**

194. I served on a Wells Bay Planning Committee, and I saw environmentalists on one end and I saw property owners, business owners on the other end, and there was no way the two were going to meet. These rules as I see them simply do not make sense. 400

195. I participated in the Wells Bay Stakeholder process and was its chairperson. The initial stakeholder meetings were established to set goals and objectives to help improve the sand dune rules. Unfortunately, this did not happen. The process was a complete failure from the perspective of our initial goals and objectives. This failure was based on the fact that all decisions were to be made by consensus and that Maine Audubon and Maine Geologic Survey stated up front that they would not accept any changes to the rules that would relax the standards for building, reconstruction and renovations of building structures. 26

196. During the Shoreland Stakeholders meetings no new sand dune regulations resulted from those sessions because consensus was arrived at that the business and homeowners were not contributing to the extreme changes of the frontal beach area. On the critical beaches (where many homes were in immediate danger) it was agreed that it was the Army Corps orientation of the breakwaters that was identified as the major contributor to the relocation of the frontal sand. 1, 57

*Response: The Department participated on both the Saco Bay and Wells Bay Beach Planning Committees and did consider specific recommendations from both committees. These committees were established at the local and regional level. The Department was not involved in the establishment or organization of the committees.*

197. I am reading into the record the comments from the Saco Bay Plan and including the whole section that contained the recommendation to “Improve the effectiveness of the state’s coastal sand dune rules by reviewing sand dune permits at the regional level” and stated that “The following actions will allow regional oversight of permitting activities with input from the local level when necessary.”

- A. Appoint a permanent regional advisory committee to advise local, state and federal interests about beach regulation and management issues in Saco Bay in accordance with existing state laws and rules.
- B. Develop clear state guidelines for routine beach nourishment strategies for Saco Bay beaches, including multi-year permitting for approved sand nourishment areas with adequate monitoring of geological and ecological impacts as determined by DEP and other relevant state agencies.
- C. Recognize different standards and definitions between municipal shoreland zoning ordinances and the sand dune rules. This should include recognition that shoreland zoning ordinances and DEP sand dune rules share overlapping jurisdiction in sand dune areas. In order to improve permitting enforcement at the local level, overlapping jurisdiction in sand dune areas should be clearly defined to help applicants and local code enforcement officers during the permitting process. 23

198. There may be additional provisions that are necessary. Regional stakeholders were concerned about the overlapping jurisdiction between sand dune rules and shoreland zoning. 15

*Response: The establishment of a regional beach advisory committee regarding beach regulation and management issues is not an issue that can be appropriately addressed through these rules. The Maine Geological Survey is currently undertaking a study to establish guidelines for beach nourishment strategies for Maine’s coastal sand dune systems. The Department analyzed the issue of overlapping jurisdiction between shoreland zoning and the sand dune rules. The Department determined that the most appropriate level of action to address inconsistencies was at the local municipal level. Interest in addressing these issues at the local level varies from municipality to municipality.*

## **EDUCATION:**

199. In recent times, the state has made admirable efforts to educate people about coastal dynamics. 69

*No response.*

200. There is a strong need for education of new DEP staff members and municipal staff in coastal towns affected by the coastal sand dune rules. Even the preparation of a general handbook and a specific guide for a particular town would reduce the inconsistencies. The rules have eased somewhat the burden of comprehending what is allowable and what is not, but I believe the State could do more in providing a comprehensive guide. 141, 408

201. Concerned about shortcomings with respect to the implementation of the current regulations. In order to maximize the effectiveness of the regulations, DEP should take steps to educate municipal representatives and coastal residents to ensure that the

regulations are followed. If municipalities and shorefront property owners had a better understanding of the rationale supporting the requirements found in these regulations, we believe that the DEP would find people to be more willing to cooperate with applicable requirements. The DEP should consider setting up meetings with municipal representatives for educational purposes and drafting a handbook that explains beach dynamics to municipalities and the general public. 3

202. Recommend a decision tree for regulators and the public. 383

*Response: Upon adoption of the rules, a guideline handbook will be developed and distributed. The Department will hold public informational meetings with all communities containing coastal sand dune systems to explain the revisions to the rules and their applicability.*

#### **SAND DUNE CHARACTERISTICS:**

203. I understand and appreciate the DEP's concern for the beaches, but I do not believe the term "sand dune" applies to our beaches. There are no present sand dunes along our beaches to protect. I believe that for the DEP to attempt to go back in time to repair a wrong from long ago is basically unfair to the present innocent property owners. Whatever amendments you come up with should start at the present and continue into the future when new owners would be aware of the situation before buying instead of laying the full burden on those who were given no warning. 48

204. Kennebunk Beach community displays none of the characteristics that your rules hope to preserve/protect. I have not seen a sand dune in this neighborhood. Ours is a residential, fully developed community and has been one for a substantial period of time. There are certainly many areas around Kennebunk Beach that need the protection of rules such as the ones you are proposing and I welcome them to protect such areas. I am concerned however that Kennebunk Beach is being put into the wrong group with these rules. 60

205. No one has seen a coastal sand dune on Kennebunk Beach in a hundred years. They simply don't exist. 400

206. Does not believe proper scientific study of these dune areas has been done. 4

*Response: As noted in the coastal sand dune systems definition (Section 3(I)), sand dune systems may include dunes that have been artificially created, dunes that may have been altered by development activity and dunes supported by sand fencing or stabilization structures. Coastal sand systems have been identified by the Maine Geological Survey and are shown on photos entitled "Beach and Dune Geology Aerial Photos"*

#### **DEVELOPED/UNDEVELOPED DUNES:**

207. The regulations need to distinguish between developed dunes and undeveloped dunes. 22, 397

208. The proposed rules fail to differentiate clearly between pristine undeveloped dunes, and the concrete and asphalt of Casino Square in Wells. 73

209. It is a real problem when there is no distinct difference between the houses on the left and the houses on the right but one is in a front dune and one is in a back dune. I'd certainly like some distinction given to the developed areas versus the undeveloped dunes. 338

*Response: The Natural Resources Protection Act does not distinguish between developed and undeveloped dunes when identifying coastal sand dune systems as a natural resource to be protected. Although some dunes may be more developed than others, proposed activities on any of them must meet the standards in 38 M.R.S.A. Section 480-D. The exception for new construction in Section 6(B)(5) does allow for a consideration based upon the developed nature of a particular frontal dune location. Furthermore, Section 8, Variances, provides an opportunity for the Department to consider applications for the construction of new buildings in less developed areas.*

#### **SEAWEED:**

210. The regulations should also include provisions relating to seaweed removal. During the summer, a number of municipalities employ mechanical means for removing seaweed from beaches. In the process of gathering seaweed, these machines often remove significant amounts of sand, which exacerbates erosion. Municipalities often dispose of the seaweed and sand in municipal landfills. Far less erosion would occur if municipalities were required to deposit seaweed at the toe of the existing frontal dunes. If seaweed is deposited at this location, then impacts from erosion will be minimized. 3, 141

*Response: The removal of seaweed from the beach by hand or mechanical means, provided the seaweed is not removed from the coastal sand dune system and does not disturb dune vegetation, has been added to Section 4(A) as a de minimus activity. Seaweed removal that does not meet these standards requires a full permit. The permit review process would include an assessment of potential erosion problems associated with seaweed removal.*

#### **FLOOD INSURANCE/FLOOD MAPS:**

211. Would flood insurance and replacement value property insurance assist property owners in complying with any new reconstruction standards imposed by state regulation? Would this be a viable long-term strategy for upgrading oceanfront structures. 9

212. I do not like government flood insurance and I wish it were not available in Maine. 10

213. No taxpayer dollars are used to support the Flood Insurance Program. 409

*Response: Issues relating to flood insurance under the National Flood Insurance Program are outside the purview of these rules.*

214. Flood maps prepared for insurance purposes should not be used in any manner to implement regulations protecting sand dunes. Insurance mapping is done for other purposes and by agencies that are motivated by factors other than protecting sand dunes. 22

*Response: Flood elevations established for flood insurance purposes represent the best available information that the Department has to identify areas of special flood hazard and to assess how susceptible a project is to being flooded.*

## **COASTAL CONSTRUCTION MANUAL:**

215. Earlier rules had a wind standard for construction and MGS favors the use of a wind standard because buildings can fail in a storm and cause environmental damage and also physical damage to other properties in the dunes. MGS recommends requiring the use of the Coastal Construction Manual in the design and construction of dune homes; this approach would include a wind standard that is currently missing. 16

216. Elevating buildings is an approach that has been used in other states and is recommended by FEMA in order to reduce storm damage to structures. Advocate that the rules require that construction comply with the FEMA Coastal Construction Manual and that building designs are certified by qualified professionals. 16

217. I would encourage the Board and staff to consider the Coastal Construction Manual as one of its tools for guiding development in the dune environment. 410

218. Instead of recommending the FEMA construction code, why not require it. My understanding is that the greater compliance a community has with FEMA standards the lower the FEMA flood insurance rates are for that community. This would provide a financial reward as well as reducing hazards in time of disaster. 71

*Response: Although the Department recognizes the utility of and encourages the use of the FEMA construction manual in coastal construction projects, it has neither the expertise nor the resources to determine compliance with those standards. That responsibility is more appropriately left to FEMA.*

## **MISCELLANEOUS GENERAL COMMENTS:**

219. The testimony presented to the Board by Bob Foley, at the public hearing in August 2002 mirrors my views. The changes he suggested should be implemented. 84, 390, 393

*No response.*

220. Would like to see a process possibly to appeal the dune mapping system. When you have a map that is at a 400 scale, what does someone do in order to portray what is in or out of the front dune or any dune. 383

*Response: An applicant can present evidence regarding the geological conditions of a specific site to support to support his or her application. The Department, in consultation with Maine Geological Survey, will consider that information in its review process. In many instances, a site visit is conducted to ensure a correct delineation is made.*

221. Every beach is unique and general rules are very difficult to enforce in that respect. DEP writes rules for some theoretical situation and they do not accommodate the variations. 392

*Response: The Department agrees that every beach is unique, but the purpose of rule-making is to write guidelines that meet the standards of the law and that can apply to all potential situations. The existing rules were extensively revised during the rule-making process. They are*

*now more readable and more predictable while attempting to cover every situation that the Department has experienced in its years of regulating sand dune systems.*

222. Urges the Board to visit Kinney Shores to see how modest grass-replanting program has been successful and demonstrates that, in fact, the presence of both homes and sea walls on frontal dunes do not automatically result in the erosion of the dunes. Examine first hand the condition of our dunes prior to making a final decision on these rules. 8

*Response: Although the Board did not visit Kinney Shores, Board members did tour a sand dune system during the rule-making process. The Board recognizes the importance and value of successful beach grass plantings in protecting frontal dunes areas. The Board also understands the detrimental effects that seawalls can have on those sensitive areas.*

223. Requiring property owners in Pine Point to have to meet the same general application and regulatory burdens as those seeking to build or rebuild in unstable beaches or on frontal dunes should not be allowed. It simply does nothing but increase the regulatory burden on private individuals and allow long-time opponents to any building in a sand dune system to create unjustified and unreasonable issues with applications. 70

*Response: This comment is about back dune areas at Pine Point in Scarborough. Under the existing rules, many projects proposed in back dune areas are eligible to apply for a Permit-by-Rule, in compliance with the standards in Department Rules, Chapter 305. This is a short form version of a permit that people who can meet an established set of standards are able to utilize. As a result, most property owners in stable back dune areas are not required to meet the same application requirements as those applying for projects in unstable back dune areas or on frontal dunes. The requirements for projects in these locations are essentially unaffected by these amended rules in comparison to the previous rules.*